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The Solicitors' Journal

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The Solicitors' Journal

VOL. LXXIX. **Saturday, January 26, 1935.** No. 4

Current Topics: Mr. Justice Bucknill—Court Accommodation—Fixing a Date for Trial—Shorthand Notes Again—Solicitors and New Procedure List — Bankruptcy Proceedings: Insufficiency of Registrar's Note—Depositions in Criminal Cases—The Restraint on Anticipation — Local Government Standing Orders—Payment of Omnibus Fare—Unemployment Assistance—"Black Coated" Workers and Income Tax—Business Failures in 1934—Recent Decisions 53

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Current Topics.

Mr. Justice Bucknill.

THE vacancy created by the death of Mr. Justice BATESON in the Probate, Divorce and Admiralty Division of the High Court of Justice has been filled by the raising to the Bench of Mr. ALFRED TOWNSEND BUCKNILL, O.B.E., K.C. The new judge, who is a son of the late Right Hon. Sir THOMAS TOWNSEND BUCKNILL, a judge of the High Court from 1899 to 1914, was born in 1880 and educated at Charterhouse and Trinity College, Oxford. He was placed in the First Class in the School of Modern History. Called to the Bar by the Inner Temple in 1903, he served on the outbreak of war in 1914 in the Surrey Yeomanry and subsequently on the staff in France, Egypt and Ireland, retiring with the rank of Major. He became a Bencher of his Inn in 1928, took silk in 1931, and had a large practice, particularly in Admiralty work. We desire to associate ourselves with the words which appeared in last Wednesday's *Times*, that the appointment "will be widely welcomed."

Court Accommodation.

WHEN, rather more than half a century ago, the architect of the Royal Courts of Justice and the contractors who carried his plans into effect finished their labours, they doubtless imagined that they had provided practically for all time "ample room and verge enough" for the various tribunals that were to be housed in the new palace of justice. For many years, it is true, the estimate of accommodation that would be requisite proved adequate, but the time came when more judges were appointed to cope with the increasing mass of litigation, and it was obvious that the number of court rooms was insufficient when all the judges were in town, and when additional tribunals were created to deal with new work. So, some years ago, the Probate, Divorce and Admiralty Division was provided with a new building, and in addition two makeshift courts—these are sometimes disrespectfully spoken of as "rabbit hutches"—were erected in the quadrangle where two judges can find overflow accommodation. Even these additions have sometimes failed to meet the needs of the day, as indeed was recently shown. On one day last week the compiler of the cause list appeared to be in difficulties as to where to put all the courts for which he had to provide accommodation, and he actually allocated two courts to one of the "rabbit hutches." Obviously this would not do, so the less august of the two—the Railway Rates Tribunal—had to migrate to a room in the east block of the building. If such things happen before we have obtained, as, presumably, we soon shall obtain, two additional judges, where are they to find room for their judicial duties? This question will ere long have to be faced and solved.

Fixing a Date for Trial.

IN the course of a short note last week on the subject at the Annual General Meeting of the Bar we referred to the Attorney-General's remarks with regard to the fixing of dates for the hearing of cases, but we made no mention of the fuller statement made by Sir HERBERT CUNLIFFE, K.C., Chairman of the Bar Council, upon the same important subject. Sir HERBERT alluded to the growing tendency on the part of some of the judges to say that they would not adjourn cases for the convenience of counsel and stated that there had been cases where counsel on both sides, who, with the consent of their clients, had asked for postponement because one or both would be engaged elsewhere and had been met with a refusal. "I want very respectfully to point out," he said, "that often what is called the convenience of counsel is really the interest of the litigant and the interest of justice." It was intimated that the existing practice of merely putting cases in a general list, without any indication as to how long the prior cases were going to take, left litigants and their advisers in a great state of uncertainty and caused much inconvenience, and many cases of hardship resulted. "I have," the speaker said, "taken counsel with some of my colleagues, and I am satisfied that a great deal of inconvenience in this respect (matters relating to the postponement of trials), and also in respect of trials generally, would be removed or lessened by definitely fixing dates for trials." Fixing a definite date for trial was given as one of the reasons why the new procedure rules have been so successful, and Sir HERBERT suggested that an effort should be made to extend "that salutary practice" in other directions. It would be idle to ignore practical difficulties, but the enormous advantages—upon which it is unnecessary to dilate—resulting from such a scheme render every effort to promote its adoption a matter of more than ordinary importance, not only to both branches of the profession, but to the lay client as well.

Shorthand Notes Again.

IN a recent "Current Topic" (78 SOL. J. 885) it was observed that "one of the much needed reforms in legal administration is the institution in each court of an official shorthand writer, whose business it would be to supply, on reasonable terms, the parties with a transcript." The late Sir EDWARD CLARKE, K.C., was one of the many eminent authorities who urged a reform of this nature, and he himself invented a shorthand system. During the hearing of an appeal in the House of Lords on 22nd January the Lord Chancellor said that he was trying to bring this reform about. Lord BLANESBURGH added that it was frequently arranged in the Chancery Courts that a shorthand note should be taken, and should be regarded as the judge's note. The official shorthand-writers attached to the Probate, Divorce and Admiralty

Division take full notes of every case tried in that Division, and such notes are used on appeal. In other courts a shorthand note may be read by a party merely to supplement the judge's notes (*Orr Ewing & Co.* v. *Johnston and Co.*, 13 C.D., p. 450), but the court must assume that the judge's notes correctly represent what took place (*Laming* v. *Gee*, 28 W.R. 217). The parties may agree with the judge that a shorthand note should supplant the judge's note, but otherwise the Court of Appeal must use the judge's note. It may well be that the habit of taking full notes may not only deprive the judge of the opportunity of observing the demeanour of witnesses, but also retard the determination of the suit. It is to be hoped that the Lord Chancellor's statement is an indication that the matter will receive the attention of the recently appointed Royal Commission on the state of business in the King's Bench Division.

Solicitors and New Procedure List.

LAST Wednesday's *Times* contained a statement made by DU PARCQ, J., when no one appeared in a case set down for hearing in the New Procedure List. The learned judge said that he was informed that the case had been settled or withdrawn some time ago, but that no communication had been made to the court. It was the object of the New Procedure List, by fixing dates for trial, to dispose of actions as quickly as possible. Neither judges nor officials of the court could achieve that object without the collaboration of counsel and solicitors. "It is the duty of solicitors," his lordship went on, "to inform the court as soon as possible if cases become non-effective, so that other cases may be put into the list on the days which fall vacant. I am glad to think that in most cases this is done, and that this is an exceptional case."

Bankruptcy Proceedings: Insufficiency of Registrar's Note.

THE attention of practitioners is drawn to the following words spoken by the Master of the Rolls on a recent application to the Court of Appeal in a bankruptcy matter. Lord HANWORTH indicated that in all cases the court would want to be satisfied that s. 5, sub-s. (2) (which requires proof of the petitioning creditor's debt, service of the petition, the act of bankruptcy, etc.), of the Bankruptcy Act, 1914, and r. 171 had not been overlooked, and continued: "I do call the attention of the registrar and of all other persons to the importance of observing and complying with the terms of that sub-section and rule, and of making a note to the effect that they have been complied with. I also call attention to the fact that any admission is not sufficient in bankruptcy proceedings; the court is acting not merely *inter partes* but in the public interest, and that being so, the court has a function and a duty to perform and is bound to perform it." The duty of the Bankruptcy Court in respect of the Moneylenders Act, the importance of proof of the debt and of an ample and complete statement of the exact situation were also alluded to by the learned Master of the Rolls. We are indebted to *The Times* for the foregoing information.

Depositions in Criminal Cases.

THE recent announcement by the magistrate at Marylebone Police Court of a new procedure which he proposed to adopt in taking depositions in criminal cases to be sent for trial is of considerable interest to those who practise in the criminal courts. The suggested scheme is that the solicitor conducting the case for the prosecution should attend the court with a written statement of the evidence of every witness, together with a copy of the statements, which would be accepted as depositions by the court and sent forward for the trial. The learned magistrate emphasised that the statements should contain nothing that was not strictly evidence. The taking of depositions in long-hand by a clerk in investigations preliminary to a committal for trial is admittedly an irksome and lengthy business, especially in cases where a large number of witnesses is essential. There seems to be no reason, either in law or in good sense, why depositions should not be taken down in shorthand, put into writing and read over and signed by the witnesses in the presence and hearing of the accused, so as to comply with s. 17 of the Indictable Offences Act, 1848, and s. 12 of the Criminal Justice Act, 1925. There are, however, certain legal safeguards which would appear to be endangered by a system under which a proof is taken in a solicitor's office in the absence of the accused, and subsequently assented to by the witness before the magistrate. Examinations-in-chief would presumably be reduced or entirely eliminated, and the considerable risk of a witness "not coming up to his proof," with which every practitioner is acquainted and which is a legitimate and valuable protection to persons charged, would be cancelled out. Moreover, it is expressly provided in s. 17 of the Indictable Offences Act, 1848, that the justice or justices must himself or themselves take the statement on oath. It is a necessary protection to the accused in conducting the cross-examination permitted under the section to be able to observe the demeanour of the witness under examination-in-chief (see *R.* v. *Watts*, 33 L.J. (M.C.) 63). The accused can subsequently use the depositions in order to contradict the statements made by the same witnesses at the subsequent trial (*R.* v. *Oldroyd*, R. & R. 88); and it is therefore essential that the evidence should be taken in the same way as it is taken at the trial. If witnesses are to wait until statements are taken down in long-hand it will be difficult to devise any scheme for shortening preliminary investigations. Meanwhile, *experimenta docent*, and the Marylebone magistrate's attempt to economise in time will be watched with interest.

The Restraint on Anticipation.

RECENT letters to the daily press express regret that the Law Revision Committee's report upon the law relating to married women (79 SOL. J. 5) confined their recommendation for the abolishment of the restraint on anticipation to future settlements, leaving—it is suggested—married women who have settlements drawn in this form in an anomalous position. It does not fall to us to defend or criticise the findings of the committee, but it may not be out of place to suggest that the objection taken on the ground that this recommendation should have been made retrospective is ill-founded. The restraint on anticipation has proved itself useful for the one purpose for which it was designed—the protection of the woman's property against her husband. That may or may not now be generally necessary, but it is certain the settlor then as now might have (and in cases where the restraint has been imposed it is most probable that he would have) had recourse to the device now known as the protective trust. Had such been the case the married woman would have been prevented from wasting her substance not only during coverture. It cannot too often be urged that the purpose of a settlement is essentially to produce income, not capital, and in this light there is much to be said for any device which favours production of the former by preventing the wasting of the latter.

Local Government Standing Orders.

SECTION 75 of the Local Government Act, 1933, enacts that the provisions of Pts. I to V of the Third Schedule shall have effect as respects meetings and proceedings of local authorities and of committees thereof. Paragraph 4 of Pt. V of that schedule enacts that, subject to the provisions of the Act, a local authority may make standing orders for the regulation of their proceedings and business, and may vary and revoke any such orders. The Ministry of Health has recently issued a useful series of model standing orders to guide local authorities in these matters. These are bound

up with the relevant parts of the Act and sold in pamphlet form (*Standing Orders and Extracts from the Local Government Act*, 1933, &c., Stationery Office, 6d.). In an explanatory letter addressed to local authorities (Circular 1444: *Local Government Act*, 1933. *Standing Orders*, Stationery Office, 1d.), allusion is made to the many requests the Minister of Health has received for a model series of this character. Where, it is stated, a local authority's existing standing orders are found satisfactory in practice and are not in conflict with the Local Government Act, 1933, the Minister is not to be taken as suggesting that they should be superseded by standing orders based on the model series, but the inquiries he has received from local authorities show that in many places standing orders have not been revised for many years, while the coming into operation of the Local Government Act, 1933, makes it desirable that every local authority shall at least consider whether its standing orders need to be brought up to date. The same letter alludes to the Standing Orders with Respect to Contracts issued last March, and emphasises the desirability of the contracts of joint boards and joint committees being subject to the same requirements as those of their constituent bodies. In this connection attention is drawn to the provisions of s. 293 of the Act in relation to joint boards and committees constituted by Order, and to those of s. 96 with regard to joint committees constituted by agreement. Section 266 of the Act, which relates to contracts of local authorities, does not by itself extend to such boards and committees.

Payment of Omnibus Fare.

We mentioned last week a case which came up for hearing by the Lord Mayor at the Mansion House Justice Room. The defendant overrode the distance which her fourpenny ticket allowed her to travel, and, when stopped by an inspector and asked why she had not paid the extra penny due, said that she did not know her fare was 5d. On the matter coming up again for hearing, counsel for the defendant said that the touchstone of the matter was not the Regulations (Public Service Vehicles Regulations, 17th March, 1933, under s. 84 of the Road Traffic Act) made by the Minister, but the statute. An attempt was being made to bring criminal responsibility upon persons who were admittedly not guilty of an intent to commit any offence. The same penalty was sought to be placed upon passengers for inadvertence as for deliberate fraud, and that, it was urged, was contrary to law. The Lord Mayor alluded to the tramway case mentioned in our issue of 12th January (79 Sol. J. 19), and adjourned the summons *sine die* pending the hearing of the appeal in that case.

Unemployment Assistance.

Readers may be reminded that the Unemployment Assistance Board, of which Sir Henry Betterton is chairman, took over on 7th January the responsibility for the care of such able-bodied unemployed as had up to then been in receipt of transitional payments. It is estimated that the increase in payments under the new regulations, which were referred to shortly in a "Current Topic" in our issue of 15th December last (78 Sol. J. 887), will be at the rate of £3,000,000 a year if the number of recipients remains substantially the same. On 1st March the Board will become responsible for the able-bodied unemployed who are now a charge on the local rates. The extra cost of this is estimated at £5,000,000 a year. The whole of this sum does not, of course, represent an increase of benefit to the unemployed, a large portion of it being in relief of rates.

"Black Coated" Workers and Income Tax.

In reply to representations by the National Federation of Professional Workers pointing out that the non-manual and professional worker suffered by tax regulations more than any other kind of worker, the Chancellor of the Exchequer recently stated that he was fully aware of the position of the "black coated" workers in relation to income tax since the autumn Budget of 1931. He intimated that their position would be fully considered in connection with the forthcoming Budget.

Business Failures in 1934.

One of the most welcome features of the year 1934 was a marked recovery in conditions of domestic trade. This was reflected in the number of receiving orders, deeds of arrangement, sequestrations and trust deeds made during the year, which, according to *Stubbs' Weekly Gazette*, numbered 6,477 as compared with 5,648 in 1933. The number of bankruptcies in 1934 was 3,933, a decrease of 529, and the number of deeds of arrangement was 2,447, a decrease of 441. The 1934 total is the lowest since 1922. Decreases in the number of failures are recorded in nearly all trades, according to *Kemp's Mercantile Gazette*, an outstanding exception being the building industry, in which failures increased from 109 to 680. In 1932 there was an increase of 646 in the total number of failures, and it is only since then that the figures have been on the up-grade. It is also noteworthy that the number of bills of sale registered and re-registered in England and Wales during 1934 decreased by 1,634 to 10,379. Although these figures indicate a substantial decline in one branch of the work available for lawyers, they presage those better times which lawyers welcome in common with the rest of the public.

Recent Decisions.

Three points emerge from the decision of the Court of Appeal in *R. and W. Paul, Ltd.* v. *Wheat Commission* (*The Times*, 19th January), where the substantial question was whether wheat offals known as "middlings" could or could not be imported in the United Kingdom without rendering the importer liable to make a quota payment under the Wheat Act, 1932, which by a proviso excludes from liability a miller whose output is proved to the satisfaction of the Wheat Commission to consist only of meal for consumption, without further manufacture, as animal or poultry food. It was held (1) that the consignments in question which were produced by stopping the milling of flour before it had passed to its normal conclusion were subject to quota payments; (2) that the jurisdiction of the court relating to the matters in question was not excluded in favour of arbitration by No. 20 of the Wheat By-laws, 1932, made in pursuance of s. 5 of the Wheat Act of that year; and (3) that the Public Authorities Protection Act, 1893, while it did not define the meaning of "public authority," operated to protect the Wheat Commissioners in the execution or intended execution of a public duty, the Act embracing, as it did, actions and other proceedings against any person for any act done in pursuance, or execution, or intended execution, of any Act of Parliament or public duty.

In *Nicholson* v. *Southern Railway and Cheam Urban District Council* (*The Times*, 23rd January), damages were recovered for personal injuries sustained while walking at night along a highway, the kerb of which had been left some six inches above the neighbouring land. A defence of contributory negligence failed, as also did the contention of the council that the railway company was responsible in not fencing off their land on the raising of the street. To make a landowner responsible, not for anything done on his land, but by something done on the highway which made that dangerous, would, in the words of Branson, J., "put a new and intolerable burden on the occupiers of land."

In *The London Corporation* (*The Times*, 23rd January), the Court of Appeal affirmed a judgment of the late Mr. Justice Bateson to the effect that the owners of a steamship were entitled to recover damages resulting from collision with a ship called "The London Corporation," notwithstanding that the former ship was sold to shipbreakers before the hearing of the reference to assess the damage. It was agreed that both vessels were in fault in coming into collision.

Vehicle Driven by Unauthorised Person.

In a recent article (78 Sol. J. 827) the liability of the owner of a car for the negligence of a friend to whom he might have entrusted it was dealt with. There have been cases, however, where the management of a vehicle has been put into another person's hands, not by the owner himself, but by his authorised driver, and it may be worth while to examine them to see when the owner may be liable in such circumstances. Some of the cases go back to the days of horse-drawn vehicles, but the principle is the same.

The defendants in *Gwilliam* v. *Twist and Another* [1895] 2 Q.B. 84, were the proprietors of a 'bus which was in charge of a driver employed by them. A police inspector, thinking the driver was drunk, ordered him to discontinue, whereupon one V, a former employee of the defendants, happening to be at hand, volunteered to drive the 'bus back to the defendants' yard which was only a quarter of a mile away. He took charge of the vehicle with the acquiescence of both the driver and conductor, and on the way, owing to his negligent driving, the 'bus ran over the plaintiff. The Court of Appeal held that the defendants were not liable as it would have been possible to leave the 'bus where it was whilst someone went to the owners for instructions. The case was decided upon the law of agency by necessity and, as A. L. Smith, L.J., pointed out, the impossibility of communicating with the principal is the foundation of the doctrine.

In *Beard* v. *London General Omnibus Co.* [1900] 2 Q.B. 530, the driver of one of the defendants' 'buses, having reached the end of a journey, went to have a meal and was somewhat delayed through being unwell. In his absence the conductor got on the box and drove the 'bus through some streets with a view to turning it for the return journey. The plaintiff was injured by the conductor's negligent driving. At the trial it was submitted successfully that the plaintiff had not made out his case and the Court of Appeal dismissed an appeal. It was contended for the plaintiff that it was sufficient for him to show that the person whose negligence was complained of was a servant of the defendants sent out by them in partial charge of the 'bus in order to establish a *primâ facie* case of authority. Romer, L.J., in his judgment, put the position as follows: "If one sees in the streets of London an omnibus admittedly belonging to the defendant company driven in the ordinary way by a person who appears to be a driver, the presumption is that he is authorised by the company. That presumption may be removed. In this case it was rebutted by the plaintiff's evidence, for it was proved that the *de facto* driver was not the person authorised to drive, but a person authorised and employed to act as conductor. In such a case the onus of showing some special authority given to the conductor to do the act which he did lies upon the plaintiff. No such authority was shown, and no case of necessity to do the acts which the conductor did was suggested, nor do the facts lead to any presumption that a case of necessity had arisen."

Another case was *Harris* v. *Fiat Motors, Ltd.* (1906), 22 T.L.R. 556. Here the defendants had been repairing a motor car which they sent back to the owner in Yorkshire in charge of a chauffeur, W, in their employ. W had orders not to give up the wheel to anyone, but at one stage of the journey he invited a friend, B, who was also a chauffeur to accompany him, and, hearing some unaccountable noise at the back of the car, he entrusted the driving to B while he himself went to investigate. Whilst B was driving the car it collided through his negligence with the plaintiff's van and did considerable damage. The plaintiff brought proceedings in the county court and obtained judgment, which, however, was reversed by the Divisional Court. The case was held to be indistinguishable from *Gwilliam* v. *Twist, supra*, since there was no necessity for the car to be kept going whilst W examined the machinery.

Although the circumstances in *Engelhart* v. *Farrant & Co.* [1897] 1 Q.B. 240, closely resembled those of the cases already referred to, there was a sufficient distinction to bring about a different result. The defendant, a tradesman, sent out a cart driven by a young man, M, for the delivery of parcels. M was accompanied by a boy, T, who merely delivered the parcels and was forbidden to drive. The oil in the lamp gave out and M went to a house to get some more. Whilst he was away T drove a little distance in order to turn the cart, and during this manœuvre the cart ran into and damaged the plaintiff's carriage. The Court of Appeal affirmed a decision in the plaintiff's favour. The defendants were held liable, not because of the negligence of T, but because the effective cause of the accident was the act of negligence on the part of M, the authorised driver, in leaving the cart. If M had been properly careful, Lord Esher, M.R., said, he should have made the lad get out and get the oil and he himself should have remained looking after the horse and cart. Lopes, L.J., put the legal position as follows:—

> "It was contended that nothing done in the way of driving by T could make the defendant liable, because T was not acting within the scope of his authority, had nothing to do with the driving, and in fact was acting in disobedience to the prohibition he had received. I think this is right. With regard to M, it was said he did not cause the mischief, and could not make the defendant liable, and that the mischief was caused by the intervention of another person—namely, T, for which the defendant was not responsible. After careful consideration I have come to the conclusion that M's negligence was the effective cause of the mischief and that the defendant is liable. Tindal, C.J., in *Illidge* v. *Goodwin* (1831), 5 C. & P. 190, said: "If a man chooses to leave a cart standing in the street, he must take the risk of any mischief that may be done." It was M's blameable carelessness which induced T to do what he did. It was that carelessness which was the real moving and effective cause of the mischief, and I believe that is the inference which any jury would draw from the facts of this case."

The fineness of the distinction between cases where liability does and does not exist is illustrated by *Ricketts* v. *Thos. Tilling Ltd.* [1915] 1 K.B. 644. At the end of a journey the driver of one of the defendants' motor 'buses gave up his seat to the conductor who drove the vehicle round some streets so as to bring it into position for the return journey. All the time the driver sat beside the conductor, and by the latter's negligence the 'bus mounted the pavement and knocked down the plaintiff. The facts were very similar to those of *Beard* v. *London General Omnibus Co., supra*, and on the authority of that case the trial judge, at the close of the plaintiff's case, gave judgment for the defendants. The Court of Appeal, however, ordered a new trial. The principle of *Engelhart* v. *Farrant, supra*, was held to apply. The effect of that case and *Beard* v. *London General Omnibus Co.*, was put by Buckley, L.J., as follows:—

> "If, as in *Beard* v. *London General Omnibus Co.*, the act, which was done by a person who ought not to have done it, was not done by reason of any act of negligence on the part of the person authorised to do the act, then it must be proved that the person who did the act was the agent of the master in doing it; but if the facts are that the servant was authorised to do the act and was present at the doing of it and the question arises as to whether the accident was due to his negligence in not performing his duty of driving or controlling the driving, or whether, he having discharged that duty, it arose from the negligence of the man who was driving, then that is a question for the jury."

In two other cases, *Booth* v. *Mister* (1835), 7 C. & P. 66 N.P., and *Mann* v. *Ward* (1892), 8 T.L.R. 699, the facts were somewhat similar to those of the cases quoted above. The Divisional Court however, in *Harris* v. *Fiat Motors Ltd.*,

supra, held that in face of the decision in *Gwilliam* v. *Twist*, *supra*, *Booth* v. *Mister*, where the defendant had been held liable, could not be treated as any authority, and in *Engelhart* v. *Farrant*, *supra*, the Court of Appeal declined to follow *Mann* v. *Ward*, a case in which the plaintiff had been non-suited. It seems, therefore, that no weight is to be attached to these two cases.

Recent Changes in Lunacy Practice.

For some years past there has been a popular agitation, more or less wide-spread, for reform in the law and practice of lunacy administration. That agitation still goes on, presumably because the public generally, who form their opinions on such matters as a rule upon sentiment and superficial knowledge, have not yet grasped the importance of the changes which have been brought about as the result of administrative action during the past year. Indeed it is by no means certain that the legal profession—in either of its branches—has tumbled as yet to a realisation of what has been happening. This is intelligible and excusable because a "lunacy" case only comes along as an unusual incident in ordinary practice to the vast majority of lawyers, and it is not until such a case does come along that the practitioner concerned begins to look into the subject.

Legislation relating to this subject may be said now to be grouped under the description of "The Lunacy Acts, 1890 to 1922," and the substantial or principal Act is the Lunacy Act, 1890 (53 Vict. c. 5). Except in so far as regards the title of this group of statutes the term "lunacy" is to be dropped, and like the term "workhouse," is to be relegated to the limbo of an inconsiderate past. The Management of Patients' Estates Rules (S.R. & O. 1934, No. 269) which came into force on 1st May last, have brought about these changes. All previous rules are thereby annulled and the whole procedure is consolidated thereby. There is no longer a "Master in Lunacy," but a "Master of the Management and Administration Department" (still colloquially and whisperingly known as "the Lunacy Office," but quite unofficially, and that is perhaps after all more desirable than that it should become known as the M.A.D. Office ! !) It is, however, only right to point out that many infirm persons whose estates are administered by the department are in no sense of unsound mind.

Concurrent with this change of name in connection with the department and its head, we are now bidden to use the word "patient" to describe any defective or person of unsound mind (whether so found by inquisition or not) who is affected by the provisions of s. 116 of the Lunacy Act, 1890. But this class of "defective" person must not be confused with a "mentally deficient" person under the Mental Deficiency Acts—from which the idea of dispensing with the indelicate term "lunacy" has apparently been derived.

The vast majority of applications by way of initiating procedure under the Lunacy Acts are now made under s. 116. "Inquisition," which originates by petition, is an extremely rare proceeding nowadays, so much so indeed that it hardly seems necessary to deal with the procedure (which, however, may be found in any of the text-books). Section 116 provides for "management and administration" of the property and affairs, not merely of persons actually found to be of unsound mind by inquisition or otherwise lawfully detained, but also of any person :—

(*a*) not so detained and not found a lunatic by inquisition, with regard to whom it is proved to the satisfaction of the Judge in Lunacy that such person is through mental infirmity arising from disease or age incapable of managing his affairs ; or

(*b*) with regard to whom it is proved to the satisfaction of the Judge in Lunacy by the certificate of a Master, or by the report of the Commissioners, or by affidavit or otherwise, that such person is of unsound mind and incapable of managing his affairs, and that his property does not exceed two thousand pounds in value, or that the income thereof does not exceed one hundred pounds per annum ; or

(*c*) with regard to whom the Judge is satisfied by affidavit or otherwise that such person is or has been a criminal lunatic and continues to be insane and in confinement.

The jurisdiction of the Judge in Lunacy in regard to all these matters of administration is to be exercised by the Master, who may delegate his authority to an Assistant-Master (see Administration of Justice (Miscellaneous Provisions) Act, 1933, s. 8). The Master may communicate personally with the judge with regard to any matter pending before him, when any point appearing to him to be novel or difficult arises, and he shall, when requested by the judge so to do, attend to give any information or assistance that the judge may require (Management of Patients' Estates Rules, 1934, r. 10). He may (r. 12) direct a petition for inquisition to be presented if he considers that course desirable, and then the judge will deal with the matter in person. Lunacy jurisdiction, it may be recalled, still rests in the Lord Chancellor, and is in practice exercised in his stead by the Master of the Rolls or one of the Lords Justices (see Lunacy Act, 1890, s. 108). Appeal lies from any certificate or decision of the Master to the judge without a fresh application or summons upon eight days' notice from date of order or certificate or decision or such further time as the judge *or Master* may allow (r. 13).

By rr. 17 and 18 all petitions for an inquisition, traverse or supersedeas, and the evidence filed in support, are to be brought before the judge without previous consideration by the Master. All other applications under the Act and/or in the Chancery Division have to be made by formal application to the Master (Form M and A.7). But (r. 19) in all cases in which the judge has jurisdiction to make an order affecting the property of a person of unsound mind the application must be made (in the absence of express directions by the judge or Master to the contrary) by original summons before the Master. In matters not relating to administration and management the Master's duty is to prepare minutes and submit his proposed order to the judge, who may make an order without the attendance of counsel, solicitors or parties unless such attendance be deemed necessary.

The proceedings relating to inquisition and after inquisition are set out in rr. 35 to 44, and, in view of the infrequent adoption of such procedure, need not be detailed here. Of more general importance—as being applicable to the great majority of cases—are rr. 45 to 58, which deal with applications relating to the property of patients not so found by inquisition. These should be carefully studied in detail. Under this procedure the Master may, if he thinks necessary, visit the person affected or require him to be produced before him, and may visit and inspect (personally or by an officer) the property ; and pending the appointment of a committee or receiver may by certificate authorise bankers or other persons to pay necessary sums out of cash or available securities by way of temporary provision for maintenance or other necessary requirements of the patient. Where it is brought to the notice of the Master by a report of the Board of Control that the property of a patient is not adequately protected or that the income therefrom is not being applied for his benefit a receiver may be appointed after investigation by a visitor under the Act. All these and various similar provisions apply to applications under the Trustee Act, 1925, and the Law of Property Act, 1925, in addition to a number of rules specially applicable to proceedings under those statutes.

For the rest—the appointment of committee and his or their duties—the duties of a receiver—the proceedings and reports of the Lord Chancellor's visitors—matters relating to costs, evidence, fees and charges against the income of a patient—and all else appertaining to the newly-revised procedure—reference to the Statutory Order will afford the clearest possible guidance.

"The Benefit of the Execution."

When an execution has been levied in order to satisfy a judgment, those acting for the judgment creditor not infrequently find themselves faced with a threat of bankruptcy by the debtor. The perils of this situation are set forth in ss. 40 and 41 of the Bankruptcy Act, 1914, which provide (*inter alia*) as follows :—

" 40.—(1) Where a creditor has issued execution against the goods . . . of a debtor . . . he shall not be entitled to retain the benefit of the execution . . . against the trustee, in bankruptcy of the debtor, unless he has completed the execution . . . before the date of the receiving order, and before notice of the presentation of any bankruptcy petition by or against the debtor, or of the commission of any available act of bankruptcy by the debtor.

" (2) For the purposes of this Act, an execution against goods is completed by seizure and sale.

" 41.—(1) Where any goods of a debtor are taken in execution, and before the sale thereof, or the completion of the execution by the receipt or recovery of the full amount of the levy, notice is served on the sheriff that a receiving order has been made against the debtor, the sheriff shall, on request, deliver the goods and any money seized or received in part satisfaction of the execution to the official receiver . . .

" (2) Where under an execution in respect of a judgment for a sum exceeding twenty pounds, the goods of a debtor are sold or money is paid in order to avoid sale, the sheriff shall deduct his costs of the execution from the proceeds of sale or the money paid, and retain the balance for fourteen days, and, if within that time notice is served on him of a bankruptcy petition having been presented by or against the debtor, and a receiving order is made against the debtor thereon or on any other petition of which the sheriff has notice, the sheriff shall pay the balance to the official receiver, or, as the case may be, to the trustee, who shall be entitled to retain it against the execution creditor."

There is thus a serious danger, whenever execution is levied, that the judgment creditor will be robbed of the fruits of his execution by a subsequent bankruptcy. Section 40 prevents a judgment creditor from retaining " the benefit of the execution " unless he has completed the execution before the time specified. The phrase " benefit of the execution " requires careful definition.

Some previous law on the meaning of the term " benefit of the execution " was recently reconsidered in *In re Godwin* (1934), 51 T.L.R. 118 ; 78 Sol. J. 930. The case involved the right to sums of money paid direct to two judgment creditors after they had put the sheriff in possession. In one case execution was levied on 13th February, 1932, and after that various sums on account were paid direct to the judgment creditor until on 7th May the full amount had been paid off. On that date the sheriff was withdrawn unconditionally, and no power of re-entry was or could have been reserved. In the second case the facts were similar, but the date of the execution was 16th June and the date of the withdrawal was 3rd August. On 21st November, 1932, there was a petition and a receiving order in bankruptcy against the debtor, and on 6th December, 1932, the debtor was adjudicated bankrupt. The trustee claimed all the money paid to the execution creditor.

The learned county court judge held that the trustee was not entitled to succeed, and this decision was upheld by Luxmoore and Farwell, JJ. Luxmoore, J., held that the benefit of the execution was the fact that " when the sheriff has seized the goods no one else can deal with them so long as the execution is in force." " There is no provision that the creditor is to repay anything he has received. The section aims only at extinguishing the benefit over the general body of creditors obtained by the execution creditor in a subsisting execution. There is no hardship on the general body of creditors if, before the bankruptcy, the execution creditor has been paid out."

With regard to the cases cited on behalf of the trustee in bankruptcy, Mr. Justice Luxmoore said that none of them was directed to the consideration of the phrase " the benefit of the execution." With regard to Mr. Justice Horridge's assumption in *In re Godding* [1914] 2 K.B. 70, that " benefit of the execution " included any beneficial result flowing from the issue of the execution, Mr. Justice Luxmoore said that that might be treated as a dictum, and moreover was not binding on the court, as such a view was unnecessary to the actual decision.

In *In re Godding, supra*, payment in full of the amount of the levy was made direct to the execution creditor after the execution in order to avoid a sale. Execution was levied on 21st May, payment was made on 28th May, and on 5th June the debtor presented his own petition in bankruptcy and submitted to a receiving order and an immediate adjudication. The trustee in bankruptcy claimed the money paid to the creditor. Whether Mr. Justice Horridge's statement was " a mere dictum " may be judged from the following : " Now on the threshold of the inquiry as to whether or not he is entitled to that order, I must decide whether, within s. 45 (of the 1883 Act) that amount represents the benefit of the execution . . . In my view, however, the true inference is that the money was paid to get rid of the execution and that it did represent the benefit of the execution." Obviously, if it did not represent the benefit of the execution, there would have been no question about the trustee's right to retain it, and therefore Mr. Justice Horridge's statement was highly material to the decision.

Mr. Justice Horridge expressly followed this " dictum " in *In re Evans : Ex parte Salaman* (1916), H.B.R. 111, where he said : " In my view this money, paid in order that the execution might be withdrawn because it was paid at the time in the hope that by withdrawing these pictures sufficient would be realised to prevent anything else being seized at all, was money that was a benefit of the execution."

There is also to be found in Mr. Justice Clauson's decision in *In re Brelsford* [1932] 1 Ch. 24, *dicta* in support of this. That was a case where execution was withdrawn in consideration of payment of the judgment debt by instalments with an immediate payment of £15 and with a condition that in default, the sheriff was to re-take possession. This agreement was made on 24th September, 1928, and on 10th January, 1930, the sheriff entered a second time. On 13th January, 1930, the sheriff still being in possession, a receiving order was made against the debtor, and on 14th January notice of the receiving order was given to the judgment creditor. With regard to the £15 paid on 24th September, Mr. Justice Clauson referred to *In re Ford* [1900] 1 Q.B. 264, and said that " having regard to the decision of the two learned Judges, Wright and Channell, JJ., it would to my mind be impossible for me, being bound by that decision, to hold otherwise than that, if the judgment creditors retained the £15 in the present case, they would be retaining some part at least of the benefit of the execution, because they obtained that £15 only as the price of their allowing the sheriff to go out of possession." The instalments paid before the second entry of the sheriff amounted to £63, and with regard to that Mr. Justice Clauson said : " It may be said that the point is not precisely covered by authority, but I can only say that I should be whittling away the principle of the decision in *In re Ford* [1900] 1 Q.B. 264, if I did not hold with regard to that sum also that, as it was obtained as the price of permitting the sheriff not to re-seize the goods, the judgment creditors would, if they retained it, be retaining part of the benefit of the execution."

The case of *In re Ford, supra*, was one where £40 was paid to the judgment creditors' solicitors in consideration of the withdrawal of the sheriff, on the condition that if default was made in payment of certain further instalments the sheriff

would have a right to re-enter. The sheriff withdrew on the 5th January and on 14th January a receiving order was made against the debtor. It was argued for the appellants that the £40 was part of the benefit of the execution, and the judgments of Wright, J., and Channell, J., in allowing the appeal, proceeded on the basis that this was so.

There undoubtedly seems to exist, more particularly with regard to the decisions of Mr. Justice Horridge, a new conflict of authority on the question of the meaning of the term. That conflict will have to be resolved in the future, and a possible way out is to distinguish the facts of the cases. In *In re Godding* a receiving order was made one week after the payment to the judgment creditor for the withdrawal of the sheriff. Mr. Justice Horridge held that the execution was not completed because notice of the receiving order was given to the sheriff within the fourteen days required by s. 11, sub-s. (2) of the Act of 1890 (s. 41 (2) of the 1914 Act), and therefore, the execution creditor could not hold the proceeds if the money was treated as having been received by the sheriff, in accordance with *In re Pollock*, 87 L.T.R. 238. The latter was also a case where a receiving order was made seven days after the withdrawal of the sheriff on payment in full to the judgment creditor personally. The learned County Court judge, whose judgment was entirely approved by the Divisional Court, quoted *dicta* of Wright, J., and Channell, J., in *In re Ford*, *supra*, to show that payment to the judgment creditor was the same as payment to the sheriff. Again, in *In re Evans* (*supra*), Mr. Justice Horridge had special regard to s. 11 of the 1890 Act, now s. 41 of the 1914 Act. In both *In re Brelsford* and *In re Ford*, *supra*, the withdrawal of the sheriff was conditional on no default being made. The result of *In re Godwin* is that, even though an execution has been levied an independent arrangement may be reached with the judgment creditor, which is not regarded as a benefit of the execution, and which is, therefore, independent of the effect of ss. 40 and 41 of the Bankruptcy Act, 1914.

Costs.

PROBATE COSTS.

We now come to the actual fees chargeable in respect of non-contentious probate business, and it must be pointed out at the outset that it is impracticable, within the confines of a single article, to quote the scales of fees *in extenso*, or to deal with every possible case which may arise in probate practice. We will endeavour, however, to give a broad outline of the fees chargeable, and to draw attention to outstanding points which must be watched. It will be borne in mind that the fees are regulated by the Order of the Court of Probate dated the 5th February, 1874, which is the only authority for the fees that may be charged and that the Rules of the Supreme Court, of which Ord. 65 and Appendix N form a part, have no application whatever to non-contentious probate costs.

We will take in the first place the costs of obtaining probate or letters of administration with will annexed. It will be found on reference to the Fee Order that the bill of costs will be made up of a mixture of itemised charges and scale fees, and we will examine, in the first place, the charges allowed by the Order in normal and straightforward cases. The bill will commence with an item—Instructions for probate, 6s. 8d. An allowance of 4d. per folio is made for perusing the will, and a similar charge for making a fair copy thereof for use. In this respect it will be observed that the folio comprises seventy-two words, although for the purpose of calculating the court fees provided later in the Order, the folio comprises ninety words.

We then come to the affidavit of the executors, or the administrators, where a grant is being obtained with the will annexed. As is known, the affidavit follows a printed form, and the solicitor's charge is regulated according to the value of the effects sworn. The solicitor's charges to cover the preparation of the affidavit and attending on the executors are as follows: Where the effects are sworn under £5—2s. 6d.; under £100—5s.; under £200—6s. 8d.; and £200 and over—10s.

There follows then the correspondence and attendances of the solicitor in collecting the information and documents to enable him to prepare the Inland Revenue affidavit. These items are such as would normally be comprised under the heading of instructions, but in probate matters the items are charged individually. It is perhaps as well to notice here that the Order provides that the charges in respect of business not otherwise provided for shall be as follows: For instructions for any original instrument prepared by the solicitor, 6s. 8d.; for perusing any document as instructions, or fair copying any document, 4d. per folio; for drawing and fair copying any document, 1s. 4d. per folio (notice that facsimile copies are allowed at 6d. per folio); and for every necessary attendance, 6s. 8d. A reasonable charge should be made for the time spent in making the calculations necessary for the preparation of the Inland Revenue affidavit. The drawing and engrossing of the affidavit is covered by a scale fee, the amounts chargeable being the same as those set out above in respect of the oath of executors. Where the Inland Revenue affidavit exceeds five folios in length, the charges in the scale may be increased by 1s. 4d. per folio for each folio beyond five. Similarly, where there is more than one executor, the solicitor may charge for each additional attendance as follows: Where the effects are sworn under £20—2s. 6d.; under £100—5s.; and £100 and over—6s. 8d. The will must then be engrossed and collated, for which there is provided a charge of 4s. 6d., where the will does not exceed three folios of ninety words each in length. For each folio beyond three, charge an additional 1s. 6d. In certain cases a photostat copy of the will will be provided by the Principal Registry, and in such cases the above fee will have to be modified.

In a simple case we then come to the grant, and the solicitor's fees for this are covered by a scale charge, or more correctly, three scale charges, namely, the fee classified in the Order as "Probate under Seal," the extracting fee and the clerk's fee. It will be observed that these fees are intended to cover the whole of the solicitor's work in lodging the affidavits and other papers, stamping the affidavits, preparing the warrant for the estate duty and interest, attendances paying the amount of duty, attendances lodging the receipt for the duty with the Registry, and all incidental attendances getting the papers passed and obtaining probate. All three fees are dependent on the value of the estate, but the first, namely, the fee under the heading "Probate under Seal," is the most important, the fee varying between 1s. on an estate where the effects are sworn under £100, to £43 8s. 9d., where the estate is sworn at a value between £400,000 and £500,000, with a further £3 2s. 6d. for each £100,000 or fractional part thereof in excess of £500,000. The fee for extracting is 1s. where the effects are sworn under £5, 3s. 4d. where sworn under £20, 6s. 8d. where sworn under £2,000, and 13s. 4d. where sworn at £2,000 and over. The clerk's fee is 1s. where the effects are sworn under £20, subject to there being no fee where the effects are sworn under £5, 2s. where sworn under £1,000, 5s. where sworn under £4,000, 7s. 6d. where sworn under £7,000, and £1 1s. where sworn at £7,000 and over.

Subject to a fee for letters and incidental expenses, the above comprises the charges allowed in respect of a grant of probate.

It will be observed that the scale fees are calculated on the *gross* amount of the personal estate, whilst the court fees are calculated on the *net* personal estate. The fees set out in the Order may be increased by 25 per cent. by virtue of r. 110 of the Probate Rules, as amended by the Probate Rule of 1932, which came into operation on the 12th October, 1932.

In our next article we will examine the form of bill and the fees allowed in respect of a grant of letters of administration. These necessarily differ somewhat from the fees allowed in respect of a grant of probate.

Company Law and Practice.

Attendance at Board Meetings.

THE duties of directors in respect of attendance at board meetings and the liabilities which may arise as a result of their non-attendance can, I think, be considered conveniently from two angles: first, the power of the company to put its own house in order, and, secondly, the power of the law to impose liability upon directors who are negligent in the exercise of their duties. The discussion of the company's ability to exercise control over its domestic affairs need not, so far at least as this particular point is concerned, detain us long; the question will depend for its solution upon the provisions of the articles of association. These very commonly provide that a director shall vacate office if, *inter alia* (I am quoting here the form given in "Palmer's Company Precedents," 14th ed., vol. I, p. 676), "he absent himself from the meetings of the directors for a continuous period of six months without special leave of absence from the directors and the board resolve that his office be vacated." This provision is very useful and quite simple in its operation; though it may be noted that a clause framed thus will not apply to the case of a compulsory absence, caused, for example, by medical reasons, but only to a voluntary absence: see *Mack's Claim* [1900] W.N. 114, and the observations of Wright, J., in *Re London and Northern Bank* [1901] 1 Ch. 728. If the articles do not contain such a clause the company will usually be able to attain the same result by exercising its power to remove a director by an extraordinary resolution: *cf.* Table A, cl. 80. There is no reason, other than that of practical convenience, why articles should not, if so desired, contain a clause requiring the attendance of each director at every board meeting and providing for the automatic vacation of his office by a director who is on any occasion absent without good and sufficient excuse.

For the other aspect of the question—namely, the possibility of fixing a non-attending director with liability on the ground of negligence in performing his duties—a dictum of Jessel, M.R., in *Re Forest of Dean Coal Mining Company*, 10 Ch. D. 450, will furnish us with a text. There the learned judge said that directors "are bound, no doubt, to use reasonable diligence having regard to their position, though probably an ordinary director, who only attends at the board occasionally, cannot be expected to devote as much time and attention to the business as the sole managing partner of an ordinary partnership, but they are bound to use fair and reasonable diligence in the management of their company's affairs, and to act honestly." One application of this principle had already been seen in *Re Montrotier Asphalte Company* (*Perry's Case*), 34 L. T. 716. There a director who had only occasionally attended board meetings was sought to be made liable for misfeasances committed from time to time by his co-directors without his knowledge at meetings at which he was not present. (Incidentally he had been present at a meeting where the minutes were read and confirmed of a previous meeting at which resolutions leading up to the misfeasances had been passed; but this was held not to fix liability upon him.) Bacon, V.-C., had no hesitation in deciding that there was no foundation in the suggestion that liability accrued from his failure to be present at the meetings. "He became a director and he is liable for all that he did as a director, but he was not bound to attend every meeting of the directors. It is not part of the duty of a director to take part in every transaction which is conducted at a board meeting. His business or his pleasure may call him elsewhere, and it would be a most unheard of thing to say that if anything wrong was done at a board meeting, he being named among the directors but not present, he is liable for what is done in his absence."

Again, in *Re Denham & Co.*, 25 Ch. D. 752, a director who for four years had attended no board meetings was held not to be personally answerable for fraudulent reports and balance sheets issued and passed by his co-directors, or the dividends paid under them. The learned judge did say that the director in question had been guilty of considerable negligence in the discharge of his duties of his office; but in the circumstances—namely, the existence of extraordinary powers of control vested in one director, and the fact that the books had been kept and audited by duly authorised officers, and the absence of any reason for suspecting misconduct—the director was not guilty of such gross and wilful negligence as was equivalent to fraud.

A similar question arose in *Re Cardiff Savings Bank* (*Marquis of Bute's Case*) [1892] 2 Ch. 100, in respect of non-attendance at the meetings of the business committee of a savings bank. Non-observance of the rules of the bank had led to the perpetration of frauds upon the bank by one of its officials. Under the rules the business was to be conducted by a president, trustees and managers and B, who had accepted the office of president and was so described in all the books and documents issued by the bank, attended one meeting of the trustees and managers and signed the minutes, but took no further part at any time in the business of the bank. He was unaware of the irregularities which had occurred and had received copies of reports and circulars issued by the bank, which justified him in believing that its affairs were being conducted in conformity with the rules, and that the accounts were duly audited. It was held that omission to attend the meetings of the bank was not the same as neglect or omission of the duties which ought to have been performed at those meetings, and that B was not liable on this ground to contribute to the assets in the winding up of the bank.

The result of these authorities was summed up by Romer, J., in his well-known judgment in *Re City Equitable Fire Insurance Company Limited* [1925] Ch. 407, at p. 429, in the following proposition: "A director is not bound to give continuous attention to the affairs of his company. His duties are of an intermittent nature to be performed at periodical board meetings and at meetings of any committee of the board upon which he happens to be placed. He is not, however, bound to attend all such meetings, though he ought to attend whenever in the circumstances he is reasonably able to do so."

Now, despite the strength of this current of authority, I do not think that a director can entrust himself blindly to it without regard to the potential perils through which he may be passing. It may well be safe to say that non-attendance at board meetings is not *per se* negligence on the part of a director. But it must still be remembered that such non-attendance may add weight to other features of his conduct and the circumstances taken as a whole be adjudged to impose liability upon him; that if he had knowledge that no meetings of directors were being held, or that a duty which ought to be discharged at those meetings was not being performed, it might be right to hold that he was guilty of neglect of duty; or that persistent attendance might in the particular circumstances of the case amount to a wilful or reckless disregard of irregularities committed by the other directors. I admit that such circumstances would be of comparatively rare occurrence; and certainly as a general rule a director who is but an infrequent attender of board meetings will not, except in very especial cases, expose himself to any liability, or, so long as he observes the letter of the provisions of the company's articles, to loss of position. I may perhaps be excused—and I fully realise that law and not morality is the proper subject-matter of this column—if I express the hope that no director who may chance to read these words will be encouraged hereafter to reduce his attendances at board meetings to a minimum; he may reflect that his shareholders (or at least the more literary-minded of them) may be saying of him as Browning said of another "lost leader":—

> We shall march prospering—not through his presence;
> Songs may inspirit us—not from his lyre;
> Deeds will be done—while he boasts his quiescence.

But he need not allow his "quiescence" to be unduly agitated by apprehensions of resulting legal liability.

A Conveyancer's Diary.

Searches and Enquiries before Contract.

I WROTE last week on the subject of searches indicating what I thought were the proper searches to be made both with regard to registered and unregistered land.

I propose this week to consider an equally important matter—what enquiries or searches ought to be made before entering into a contract.

I must, however, first deal with two questions which have been put to me.

First: "Is it to be taken that in the case of registered land no search at all is required except an official search of the register and a search for local land charges?" My answer to that is "Yes."

Then I am asked "whether it is necessary to search in more than one of the local authorities registers, e.g., in a borough council register as well as the county council register?" Again I say "Yes." In fact it will generally be necessary to search in two local registries.

I turn now to the subject of enquiries and searches to be made before contract.

I have dealt with this matter before, but it seems to follow on from last week's "Diary," and is of considerable importance. I need hardly therefore apologise for referring to it again.

Whilst no doubt, in approving a draft contract, the purchaser's solicitor usually asks some questions, I doubt whether, as a matter of routine, all the enquiries are made which might, and I think ought, to be. It would be a good practice to have a form which would be automatically used in every case, just as the common forms of requisitions are used as a guide. The form with which I am familiar is the "Enquiries arising on a draft contract for sale and purchase," published by The Solicitors' Law Stationery Society. There are, possibly, others of equal utility; I only mention this matter of having a form at hand because I have found it so helpful in practice. At any rate having such a form is a reminder that enquiries ought to be made.

First, with regard to searches before contract, there can be no doubt that a search should be made for local land charges. There is no difficulty in doing that, and I need not dwell upon it because I think that it is generally done.

As to searches for charges registered under the L.C.A., 1925, that is a more difficult matter. Assuming such searches to be necessary, a purchaser is placed in an impossible position. The index kept at the Land Registry is an alphabetical one, and until he has examined his abstract a purchaser cannot tell in what names a search ought to be made.

Nevertheless a purchaser is saddled with notice of all matters registered under the Act. That is the effect of s. 198 (1) of the L.P.A., 1925 (curiously enough not in the L.C.A.), which reads:—

> "The registration of any instrument or matter under the provisions of the Land Charges Act, 1925, or any enactment which it replaces, in any register kept at the land registry or elsewhere, shall be deemed to constitute actual notice of such instrument or matter, and of the fact of such registration, to all persons and for all purposes connected with the land affected, as from the date of such registration or other prescribed date and so long as the registration continues in force."

It is plain therefore that a proposed purchaser before contract has notice of all matters registered under the L.C.A., and it is equally plain that he has not the information to enable him to make any effective search in the register.

What then ought a purchaser's solicitor to do? There has been much discussion on this point arising from the dictum of Eve, J., in *Forsey and Hollebone's Contract* [1927] 3 Ch. 379. In that case a vendor contracted to sell free from incumbrances. It transpired that there had been a resolution passed by the local authority regarding the establishment of a town planning scheme, and the resolution had been registered in the local land charges register. Eve, J., held that the resolution was not an incumbrance and did not constitute an effective charge. His lordship, however, further expressed the view that, if the resolution were an incumbrance, the purchaser was bound by notice of it under s. 198 of the L.P.A., and could not resist specific performance on the ground that there had been no disclosure by the vendor of the incumbrance. The Court of Appeal upheld the decision of Eve, J., that the registered resolution was not an effective charge, but expressed no opinion upon the question whether, if it had been an effective charge, the purchaser would have been bound to take subject to it.

I do not wish, here, to revive the discussion as to whether the dictum of Eve, J., was right or not. It seems to me that, whether it was right or wrong, the utmost that the solicitor for a purchaser can do is to see that in the contract the vendor expressly states that he sells "free from incumbrances, whether registered under the L.C.A., 1925, or any other statute or not." I wonder that words to that effect are not more frequently seen in contracts. If the purchaser's solicitor sees to it that such words are inserted, he will have done his best and probably protected his client in spite of s. 198 (1), for I do not think that a purchaser is affected by notice of an incumbrance if the vendor has expressly agreed to sell free from incumbrances. At the same time, it must be borne in mind that the contract in *Forsey and Hollebone's Contract* was to sell "free from incumbrances." I think, therefore, it may be as well to add "whether registered under the L.C.A., 1925, or any other statute or not," and so make it quite clear that the vendor undertakes to make a title free from all registered as well as unregistered incumbrances.

Now, with regard to enquiries which should be made before contract.

I suggest the following, at least, should be made:—

(1) As to tenancies.—Copies or sufficient abstracts of the leases or agreements should be asked for. It should also be enquired whether there are any outstanding or anticipated claims by the tenants. Enquiries of the tenants need not be made until (but should always be made after) contract.

(2) Whether there are any charges registered under the L.C.A., 1925, affecting the property.

I need not say more about this.

(3) Whether there are any easements, quasi-easements or other rights over the land.

If the vendor knows of any such easements or rights he should disclose them, but the mere asking of the question will put the vendor on his enquiry and the purchaser need not be satisfied with the reply that he is not aware of any, although, of course, he generally will be.

(4) Whether there are any local land charges registered against the property.

The purchaser can, of course, search with regard to this and should always do so.

(5) Whether there is any tithe, tithe rent-charge, tithe annuity, land tax or other outgoing payable other than the usual rates and taxes.

(6) Whether there are any outstanding notices by the local authority requiring any repairs or alterations to be made, or any claims in respect of anything required to be done.

With regard to this it will be best to enquire of the local authority as a search in the local registry may not be sufficient when the purchaser is bound (as he usually is by a contract) to take subject to any such claims.

(7) As to the insurance of buildings.

Generally a purchaser will be well-advised to effect his own insurance on the signing of the contract. An insurance company will always hold him covered pending completion. If it is intended to take over the vendor's policy it is not enough that notice of the contract should be given to the

insurance company, the company must agree to the purchaser having the benefit of the policy (see L.P.A., s. 47 (1) (*b*)).

(8) In the case of registered land, whether there are matters which are overriding interests under s. 70 (1) of the L.R.A., 1925.

(9) With regard to boundary walls and fences.

(10) Whether the adjoining roads have been taken over by the local authority and all charges in respect thereof paid.

There may be a question in respect of charges not yet registered.

(11) What, if any, agreements have been entered into regarding rights of light which may affect the property.

The purchaser ought to know this before signing the contract. The vendor should, of course, disclose any such agreements, but it is as well to put the question especially where there is a clause in the contract (by reference perhaps to one of the well-known forms of conditions of sale) binding the purchaser to accept the title subject to such agreements, if any.

(12) There are other questions with which the space at my disposal this week does not permit me to deal, but are of comparatively small importance. I refer the reader to my "Diary" in 76 SOL. J. 265, and to the form which I have mentioned.

(13) Lastly, and of considerable importance in many cases, is an enquiry regarding identity.

Almost always (in fact I may say always in a draft contract prepared by a solicitor) the purchaser is bound to accept the identity of the property contracted to be sold with that described in the muniments offered as the title to the property. The form adopted varies slightly, but that is the effect of it in practically every case. The result is that quite frequently the purchaser is unable to clearly identify the property which he is purchasing with that to which a title is shown. He is, nevertheless, bound to admit the identity or involve himself in litigation, the outcome of which may be very doubtful.

It is difficult to say exactly what question should be put to the vendor on this point. Everything must depend upon the description in the draft contract submitted. In many cases no doubt can arise; in others there may be considerable doubt. So far as that can be done it will be best to repeat the description in the draft conveyance and ask whether the property is described in identical terms in the muniments of title, and if not, whether it is described in such muniments or any of them in terms which will enable the purchaser to clearly identify the property with that described in the draft contract.

In the form to which I have referred the question is put: "Is the identity of the property comprised in the contract with that disclosed in the muniments of title quite clear?" I am not sure that that is sufficient for all cases, but it may pass for most—like all forms it must be subject to adaptation.

Finally, there may be special clauses in the draft contract regarding which enquiries should be made which the purchaser will be precluded from making after the contract has been signed. *Caveat emptor!*

Landlord and Tenant Notebook.

Sub-Tenant, Mesne Lessor and Head Lease.

IT once looked as if the Court of Appeal had taken a view at variance with a long series of authorities which had laid it down that a mesne lessor was under no liability, towards his tenant, to observe obligations owing to the superior landlord. The apparent change was ascribable to a passage in the judgment of Bowen, L.J., in *Harrison, Ainslie & Co.* v. *Muncaster* [1891] 2 Q.B. 680, C.A. In that action the plaintiffs, mining tenants, claimed damages for breach of an ordinary covenant for quiet enjoyment. The tenants (of the same landlord, the defendant) of a neighbouring mine had indulged in a perfectly legitimate operation known as "pecking out," and in so doing had struck an unsuspected stream of water. The consequence—or, at all events, the next event, for even the law of gravity was *primâ facie* infringed—was that the plaintiffs' mine, though on a higher level, became flooded. This state of affairs led to a close examination of the scope of a covenant for quiet enjoyment. It was held that "claiming under him" was limited to "claiming under him the right to do the acts done," and that those acts must be the acts which *caused* the interruption. In this case the pecking was not the cause, and on this ground the action failed. But in the course of his judgment Bowen, L.J., said: "I think that an interruption under such a covenant is not caused by the lessor or those claiming under him, unless it is either a direct act of interruption, or unless it is some act which either was foreseen or *ought by reasonable care to have been foreseen* that the consequence in the particular case would be an interruption."

The italics (mine) indicate what gave rise to false hopes in the breasts of members of the sub-species undertenant, hopes which were dashed to the ground some eight months later when the case of *Kelly* v. *Rogers* [1892] 1 Q.B. 910, C.A., came before the same tribunal, the constitution of which, however, did not on this occasion include Bowen, L.J.

The claim was by a sub-tenant ejected in consequence of the forfeiture of the head lease on the grounds of disrepair and non-payment of rent. (No vesting order could then be sought.) The cause of action was breach of covenant of quiet enjoyment, and at first instance Grantham, J., had left the whole thing to the jury, who had awarded the plaintiff £500. In the Court of Appeal those appearing for him, begging at least one question, argued that here was a case in which enjoyment had been interrupted in consequence of an act which it was foreseen, or ought by reasonable care to have been foreseen, would have that particular consequence. This, as was pointed out, assumed that Bowen, L.J., was giving a complete definition of a covenant for quiet enjoyment. He was not, and the award must be set aside, for here again the chain of causation was incomplete; the defendant's default was an occasion rather than a cause.

People who are about to take over premises from a tenant, and tenants who have premises of which they wish to dispose, often think it does not matter two straws whether the intention is carried out by means of an assignment or by means of an underlease for all but the last day or two of the term. The alienee is in a far better position if he can get an assignment, and the alienor will normally do much better to grant an underlease entitling him to distrain and threaten forfeiture as well as to bring an ordinary action.

Naturally, one cannot withhold sympathy from an undertenant in the position of the plaintiff in *Kelly* v. *Rogers*, for his case, if not different in kind, at all events differed in degree from that of Messrs. Harrison, Ainslie & Co. in the first case mentioned. One cannot expect the most prudent landlord to foresee that ordinary mining operations will cause a flood of adjoining property, still less that the water will flow upwards in defiance of Sir Isaac Newton's ruling; but one can at least suspect that a superior landlord, armed with a proviso for re-entry, will exercise it though he need not do so and though other remedies are available. It is also perhaps of some significance that since *Kelly* v. *Rogers* was decided an age-long conflict as to whether "breach" of a covenant to be *performed* includes breach of a negative covenant has been settled by *Harman* v. *Ainslie* [1904] 1 K.B. 698, C.A., the answer being in the affirmative. So, if in *Kelly* v. *Rogers* any weight was given to the factor that the defendant had not done any "act which it either was foreseen or ought by reasonable care to have been foreseen," etc., that consideration could now be disregarded. (I say "if," because, while Fry, L.J., spoke of the mesne tenant's default, Lopes, L.J., referred to his having done something which gave the superior landlord power, etc.).

On a somewhat different footing are those cases in which an undertenant's misfortunes are due to failure to examine the head lease, though in such circumstances our kindly judges are often constrained to express sympathy for one party when giving judgment for the other. (Incidentally, this does not always have the effect of soothing the loser's feelings; I have known at least one litigant whose reactions would have landed him in Brixton Prison if the sympathiser had been within earshot.) However, what I have remarked as to the possible effect of *Harman* v. *Ainslie* applies to such a case as *Spencer* v. *Marriott* (1823), 2 D. & R. 665, a claim for breach of covenant for quiet enjoyment brought by assignees of an underlease against the executors of the mesne tenant. The head lease, granted by the Foundling Hospital, prohibited business user, and the complaint was that the deceased, in granting the underlease without corresponding covenants, had thereby hindered the plaintiffs from enjoying, etc. The judgment stresses the fact that the deceased's sin, if any, was of omission, not commission, so there was "no blameable concealment." In *Besley* v. *Besley* (1878), 9 Ch.D. 103, a sub-tenant fastened on a "notice to quit" given him by the mesne lessor when he found that the underlease exceeded the head lease by some nine years. This was held to be a case in which "*caveat emptor*" applied; and, as regards breaking the covenant for quiet enjoyment by giving notice, that was not the cause of the trouble. Similarly, a claim against the estate of a deceased tenant for life, whose grant was *ultra vires*, failed in *Pease* v. *Courtney* [1904] 2 Ch. 503.

Our County Court Letter.

WIFE'S LIABILITY ON TENANCY AGREEMENT.

Under the Married Women's Property Act, 1893, s. 1, every contract entered into by a married woman is deemed to be entered into with respect to her separate property. In the recent case of *Murray* v. *Moorcroft*, at Cardiff County Court, an interpleader issue was tried in the following circumstances: the plaintiff and his wife had resided in a bungalow (owned by the defendant), but the agreement had been entered into with the wife, as the plaintiff was too occupied with his business. During their occupation a cork had been blown from a bottle of gravy browning (owing to fermentation inside) and stains had thus appeared on the kitchen ceiling. The defendant had claimed £1 9s. by way of damages, and (having obtained judgment therefor against the wife) had levied execution upon certain furniture, which the plaintiff contended was his own. His Honour Judge Thomas upheld this contention and gave judgment accordingly, with costs. It is to be noted that, if the wife had rented the bungalow expressly as the agent of her husband, the result would have been to render him liable.

THE FARES OF FOREIGN DOMESTIC SERVANTS.

In the recent case of *Baumann* v. *Pascoe*, at Weston-super-Mare County Court, the claim was for £5 12s. as the fare from Amstetten (Austria) to London, under a contract of service dated the 12th August, 1934. The plaintiff's case was that, having met the defendant's wife in the south of France, she subsequently received a letter offering her a situation at £40 a year and her fare. The plaintiff accepted, and was met by the defendant's wife in London, and she took up her duties at the defendant's house at Burnham-on-Sea. In November the defendant complained that the plaintiff could not do English cooking, and another situation was found for her, but her fare was still unpaid. The defence was that there was a contract for twelve months' service, which the plaintiff had broken, and she was only released from service on condition that she abandoned any claim to the fare. His Honour Judge Parsons, K.C., observed that the contract provided for the fare, which should have been paid at the time. There was no stipulation for a minimum period, and the plaintiff had not given up her right to the fare in exchange for a nebulous right of the defendant to retain her services. In law the defendant was liable, and judgment was therefore given for the plaintiff, with costs.

RECENT DECISIONS UNDER THE WORKMEN'S COMPENSATION ACTS.

ADDED PERIL.

In *Pugh* v. *Edward Elwell Limited*, at Walsall County Court, the applicant (aged fourteen years) claimed an award in the following circumstances: (*a*) While carrying spades from one workshop to another, he slipped near a door, and his right hand was caught in a revolving emery mopping machine, (*b*) no one was in the workshop at the time, and the injury had disabled the thumb and two fingers of the hand. The respondents' case was that (1) one of their workmen had seen the applicant move the gauge of the mopping machine, and the same witness had previously reproved the applicant for switching off a dynamo, (2) another witness had once reproved the applicant for putting his foot on the treadle of an automatic stamp. His Honour Judge Tebbs held that the applicant had not told the truth, as an acceptance of his evidence would involve a finding of perjury by the other workmen. As the accident arose through the applicant meddling with machinery, which he had no right to touch, judgment was given for the respondents, who did not ask for costs.

DEATH BY LIGHTNING.

In *Asher* v. *Thompson*, at Retford County Court, the applicant's case was that her deceased husband had been hoeing cabbages, in a shower of rain, during which there was a flash of lightning, which travelled down his left side to the ground. A fellow worker stated that the hoe was in the left hand of the deceased, and it was submitted that death was due to an accident arising out of his employment. The expert evidence (of an electrical engineer) was that a minor thunderbolt had killed the deceased. The respondent's medical evidence was that the deceased's hair was singed, but the only marks on the body were a wound on the left of the face (probably caused by the fall) and a burn on the right thigh, while the other marks were on the right ankle and leg. A consulting engineer was called as an expert, and stated that metal would not influence flash lightning, which contained a million volts. The flash would have struck the same place, if no one had been there, or if the deceased had been carrying a dozen hoes, or a steel bar, as the flash would have gone to earth within a few inches. His Honour Judge Hildyard, K.C., observed that the fact of the deceased having been killed by lightning did not render the respondents liable, and the application was therefore dismissed, with costs. Compare *Andrew* v. *Failsworth Industrial Society, Ltd.* [1904] 2 K.B. 32, in which an award was made in the case of a man struck by lightning, while working on a scaffold, where he was held to have been exposed to more than the common risks arising from the forces of nature.

THE REPORTS OF MEDICAL REFEREES.

In *Roberts* v. *Denaby Main Colliery Co. Ltd.*, at Doncaster County Court, the applicant was certified as suffering from nystagmus in September, 1934, and was paid 23s. 6d. a week for eleven days, and 5s. a week thereafter. In November the medical referee reported that the applicant was fit for surface work, but the medical evidence (for the applicant) was that he was unfit for pit work. No evidence was called by the respondents, who contended that the action was brought with a political purpose, viz., to object to medical referees deciding such cases. His Honour Judge Hildyard, K.C., held that the applicant's condition had altered since he saw the medical referee, and an award was made of full compensation

POINTS IN PRACTICE.

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Deed of Dissolution of Insolvent Partnership—Conveyance by One Partner to the Other.

Q. 3105. A and B, partners, execute a deed of dissolution, which recites (*a*) that the partnership business after preparation of accounts is insolvent; (*b*) that A's share is admittedly valueless; and (*c*) that A will convey his share in certain partnership (real) property to B in consideration of B taking over debts and indemnifying A against claims. There is no other consideration expressed nor believed to have been in fact, and by the deed A conveys his interest in the partnership property to B. On the purchase from B the purchasers' solicitors raise the point that this is a voluntary conveyance within s. 42 of the Bankruptcy Act, there being no valuable consideration passing within the meaning of the section. This is based on the argument that B, in fact, gives no consideration by indemnifying A against debts which B as a partner is already liable to pay and for which A, in spite of the indemnity, is also liable. Could the purchaser insist on the deed of dissolution being handed over, as there is no other real property referred to or comprised in it? Assuming the purchaser's contentions to be correct, is there any method of curing the defect?

A. It is understood by the question that the actual conveyance from A to B did not contain any covenant of indemnity. If so, *qua* the Stamp Act, the purchaser is entitled to claim that the stamp duty should be adjudicated. It would perhaps be well to have an endorsed supplemental deed reciting the true consideration (that A's share was less than his share of the liabilities, and that B had agreed to indemnify A on having a conveyance, etc.), a covenant of indemnity would then be inserted. Even a voluntary deed, however, is perfectly good in favour of a *bonâ fide* purchaser, and if the purchaser has no notice of an act of bankruptcy committed by A, the opinion is given that he can have no ground of objection. Even knowledge ascertained from the deed of dissolution (which should not have been produced) that the partnership assets are of less value than the amount of liabilities, is no evidence that A has committed an act of bankruptcy.

Conveyance after 1926 of Realty to Trustees of Pre-1926 Settlement—Method of Vesting Legal Estate in Tenant for Life.

Q. 3106. A is tenant for life of a strict settlement of land created before 1926. A principal vesting deed in accordance with the Settled Land Act, 1925, was executed in 1926, covering all the land then subject to the settlement. In 1932 A bought certain real property with his own moneys and the property was conveyed to him in fee simple. Shortly afterwards, by arrangement with the trustees of the settlement, this property was purchased by them from A out of the trust moneys available for investment, but the property was conveyed by A to the trustees in fee simple upon the trusts of the settlement; whereas it would appear that the subsidiary vesting deed vesting the legal estate in the property in A as tenant for life of the settlement should have been executed by A instead of a conveyance to the trustees. It would seem that the legal estate has become vested in the trustees and that the proper course now is for the trustees to execute a subsidiary vesting deed as required by s. 10 of the Settled Land Act, 1925, vesting the property in A. We are, however, in some doubt as to what was the legal effect of the conveyance to the trustees by A and we should be glad to have your opinion as to the procedure to be adopted, vesting the legal estate in A as tenant for life of the settlement.

A. The conveyance to the trustees is deemed to be a trust instrument (S.L.A., 1925, s. 9 (1) (iii)). A vesting deed in favour of the tenant for life is now needed (S.L.A., 1925, s. 9 (2)). It would appear that this vesting deed will be principal and not subsidiary, and this because the conveyance to the trustees would seem to have created a new and separate settlement, the trusts being declared by reference to an existing settlement, that is to say, a referential settlement (see S.L.A., 1925, s. 32). S.L.A., s. 91 (1) (i) is permissive only.

Motorists' Liability for Hospital Expenses.

Q. 3107. What is the position under s. 1 of the Law Reform (Miscellaneous Provisions) Act, 1934, in regard to damages now obtainable on behalf of the estate of a deceased person. The circumstances of the case which we have in mind is a man who was knocked down by a mechanically-propelled vehicle and died in hospital a few days later, and assuming for the purpose of this question that negligence can be proved against the driver of the said vehicle, what is the measure of damages recoverable by the estate? It appears that prior to the passing of the said Act no damages could be obtained in the circumstances above mentioned, and that even the funeral expenses were not recoverable. It should be observed that there are no dependents upon the man. It seems to us that the doctor's, hospital, ambulance and funeral expenses can now be recovered by the personal representative, and the point on which we feel some doubt is whether anything beyond the same is recoverable by way of general damages, or otherwise.

A. The measure of damages is limited to out-of-pocket expenses, as exemplary damages are not to be included. See the Law Reform (Miscellaneous Provisions) Act, 1934, s. 1 (2) (*a*). Funeral expenses are expressly recoverable under s. 1 (2) (*c*), which excludes "any loss . . . to his estate consequent on his death." The doctor's, hospital and ambulance fees are not within this category, and are, therefore, recoverable under s. 1 (1).

Settlement—Cesser—Legal Estate in Person absolutely entitled—No vesting Instrument—Procedure.

Q. 3108. G. D., by his will proved on the 14th March, 1910, devised (inter alia) two dwelling-houses unto his trustees upon trust to permit his wife to receive for her own use the rents and income of those houses during her life, and upon her decease he directed his trustees to pay the income of these two houses to his daughter, A. J., during the life of her husband W. J. for her separate use, without power of anticipation. And he further directed that if the said husband W. J. should die in the lifetime of his said daughter A. J., then from and after his (the husband's) death, he devised the said two houses to his daughter A. J., her heirs and assigns with a proviso over in the event of the said daughter dying in the lifetime of her said husband. The widow of the said G. D. died on the 22nd October, 1925. W. J. (the husband of A. J.) died on the 1st February, 1934. It is now proposed to convey the two dwelling-houses to A. J. in accordance with the devise contained in the will of G. D. By virtue of the transitional provisions of the new legislation, it would appear

that the legal estate of the property vested in A. J. as a person having the powers of a tenant for life, although on the death of the husband, the settlement created by the will of G. D. would seem to come to an end. Your opinion would therefore be appreciated :—

(*a*) As to the true effect of the transitional provisions in this case ; and

(*b*) As to the form the conveyance in favour of the devisee A. J. should take, having regard to the fact that A. J. will be both the grantor and grantee, although in different capacities, and that it will no doubt be necessary to join the trustees of the will of G. D. as a confirming party.

A. (*a*) On 1st January, 1926, A. J. took the legal estate as being a person having the powers of a tenant for life (S.L.A., 1925, s. 20 (1) (*v*) and L.P.A., 1925, s. 39, and Sched. I, Pt. II, paras. 3 and 6 (*c*)).

(*b*) No action seems needed. No deed of discharge is required under S.L.A., 1925, s. 17, as there has been no vesting instrument, and the person now absolutely entitled already has the legal estate. She will be under no disability by reason of S.L.A., 1925, s. 18.

The Housing Act, 1930, s. 40.

Q. 3109. We shall be glad if you could let us know whether there is any reported decision on s. 40 of the Housing Act, 1930, dealing with the termination of the lease of dwelling-houses which have been demolished under a clearance order or demolition order and with the payment of compensation as between lessor and lessee. If you are unable to refer us to any case, can you say on what principles the court acts in awarding compensation in these cases ?

A. There is no reported case, but the court (in awarding compensation) will have regard to the age of the property, the length of the lease remaining unexpired, and the extent to which the clearance or demolition order was brought about by the neglect to repair. If there was a long lease, and the same lessee had been in occupation for a long period, the lessor might claim compensation from the lessee by way of damages for breach of covenant. The lessee, however, would plead the L.T.A., 1927, s. 18, in mitigation of damages. This would apply more to a demolition than a clearance order, which covers an area comprising many houses. In the case of a clearance order, it is difficult to see how s. 40, *supra*, can operate, as the order is made through circumstances beyond the control of lessor or lessee. The section does not imply that either the lessor or the lessee necessarily has a claim against the other in every case. In the event of an injustice arising, in a special case, the section provides the remedy. It will be a matter of construction whether the lease binds the lessee to rebuild (as in the case of destruction by fire) but—if so—he may be required to compensate the lessor, in consideration of his accepting a surrender and releasing the lessee from the covenant.

Costs Prior to Voluntary Liquidation.

Q. 3110. Mr. X, a solicitor, was consulted by the managing director of a company, and instructed to prepare and submit to a special general meeting of the company a resolution to wind up the company by reason of its liabilities and in connection with this he attended the meeting, circularised the creditors and inserted the usual notices in the papers. In due course a liquidator was appointed and the liquidator has now been asked by the solicitor to pay his charges in connection with the work done prior to the passing of the resolution by the creditors appointing the liquidator liquidator of the company. It is contended by the solicitor that the costs of the preliminary work referred to above are in the same position as those incurred when a debtor files his petition in bankruptcy and are payable in full out of the assets. It is contended on behalf of the liquidator that the preliminary costs are not payable preferentially out of the estate, that although the liquidator must pay for any work he instructed the solicitor to do after his appointment, the solicitor should look to the director who authorised the work for payment of his charges in connection with the preliminary work or prove in the winding-up as an ordinary creditor. Although a careful search has been made of the authorities it has not been possible to find any case on all fours, and I shall be glad to have your opinion on the matter.

A. The opinion is given that the solicitor is entitled to costs in full out of the assets, in view of the Companies Act, 1929, s. 262, providing that the same rules shall prevail (as to secured creditors and debts provable) as are in force under the law of bankruptcy. In a compulsory winding up, the costs of a petition properly presented are payable out of the assets. See "Handbook on Joint Stock Companies" (38th ed., 1933), p. 575, and there is no difference in principle in the case of a resolution to wind up voluntarily, without any presentation of a petition.

Clerk of the Peace Fees.

Q. 3111. We acted recently on an appeal from a petty sessional court to the county quarter sessions, against the refusal of the magistrates to grant our client a certificate under s. 2 of the Moneylenders Act, 1927, and the appellant entered into the usual recognisances prior to the hearing of the appeal. The appeal was allowed, but no order was made in respect of costs. The clerk of the peace is now pressing our client for 11s. 8d. to which he alleges he is entitled in respect of the fee for drawing up and recording the order, a copy of which was sent to the appellant. Is this demand justified ?

A. The clerk of the peace is attached to the appellate tribunal, and where the decision of the petty sessional court is varied, it is his duty to record the appeal tribunal's decision and to forward a copy of the order to the clerk of the petty sessional court, and, in the present instance, to forward a copy of the order to the appellant (see Summary Jurisdiction Act, 1879, s. 31). This order has been obtained at the instance of the appellant, and accordingly, the costs incidental thereto fall upon him, and since there is no order as to costs, then the parties upon whom the costs fall must themselves bear them. The request of the clerk of the peace in the present instance, therefore, seems to be quite in order.

The Agricultural Holdings Act, 1923.

Q. 3112. A was until the 31st March, 1934, the tenant of a small field owned by B. A left on 1st April, 1934, without notice and without giving any attention whatsoever to the hedges and fences. A alleges that the agent of the landlord stated at an interview prior to the 31st March, 1934, that if A was not satisfied he could clear out, and A acted on this statement. There was no written agreement, and the field was re-let immediately. It is now sought to sue A for the following :—

(1) One year's rent in lieu of notice.

(2) Compensation for cutting hedges and repairing fences.

Please state whether in your opinion such a claim is likely to succeed in view of the following :—

(*a*) The field was re-let immediately.

(*b*) Part of the hedge became so bad two years ago that B was compelled to attend to the same. B did not ask A to make a refund of the cost.

(*c*) If notice (which is denied) had been given the statutory period under the Agricultural Holdings Act, 1923, for a claim for compensation would have been six months.

A. (1) The claim is not likely to succeed, in view of (*a*).

(2) Compensation for cutting hedges and repairing fences is not recoverable, as—in the absence of a written agreement—B's assumption of the liability (two years ago) estops him from alleging now that A is liable. Both questions are therefore answered in the negative.

To-day and Yesterday.

LEGAL CALENDAR.

21 JANUARY.—It is rare for a man under arrest on a charge of murder to be called as a witness in a civil action, but on the 21st January, 1856, William Palmer, the poisoner, was brought to Westminster from Stafford Gaol to give evidence in the case of *Padwick* v. *Palmer*, the defendant being his mother. The question was whether the signature on a certain bill of exchange was hers, and Palmer, placed in the witness-box, admitted that it was a forgery for which he was responsible, alleging, however, that his wife, whose murder was one of those with which he was charged, had actually written the name. He was removed from court very strongly guarded and the jury gave a verdict for the defendant.

22 JANUARY.—Sir David Williams, a Justice of the King's Bench, died on the 22nd January, 1613. His bowels were interred in Kingston Bagpuse Church, but the rest of his body was carried to Brecknock in his native county. He was said to have been descended from Bleddin ap Maenyrch, lord of Brecknock in 1091. His very curious will left " my good brother Warburton " (Warburton, J., of the Common Pleas) " the choice of either of my scarlet robes and he to take that shall best like him, praying him that as he hath been a good and kind brother unto me, so he will be a good and kind friend to my children."

23 JANUARY.—At Mullingar on the 23rd January, 1846, Bryan Seery was tried before the Lord Chief Justice of Ireland and the Lord Chief Baron for the attempted murder of Sir Francis Hopkins, a country gentleman living on a large estate. One night the victim of the attack had been fired at beside his own door. The shot missed and he grappled with his assailant, whom he was astonished to recognise as Seery, a fellow to whom he had shown some kindness. The man got away, but was afterwards recaptured. The whole case turned on his identification. He was found guilty, sentenced to death and hanged.

24 JANUARY.—On the 24th January, 1890, Mr. Justice Manisty, then over eighty and the oldest judge on the Bench, was hearing a common jury action when it was suddenly noticed that he had been taken ill. A paralytic stroke had seized him and he was carried out of court never to return. He died a week later. Up to the moment of his attack, the handwriting in which he had been taking his notes was as delicate and distinct as if he had many years before him.

25 JANUARY.—On the 25th January, 1815, the Lord Chancellor made the following pronouncement: " In this case, in which a solicitor has become concerned for two opposite parties, I requested the two Chief Justices of the Courts of King's Bench and Common Pleas and the Chief Baron of the Exchequer to procure for me the opinion of the Judges. I have not yet had the opinion of the Barons of the Exchequer, but the opinion of the Judges of the Courts of King's Bench and Common Pleas was laid before me yesterday and that opinion is that no solicitor is authorised so to act."

26 JANUARY.—At about ten in the evening of the 26th January, 1679, a set of chambers in Pump Court caught fire, a lump of coal having fallen from the grate to the floor. The Thames being frozen, the engines could not be fed with water and, though in desperation the firemen played away many barrels of beer from the Temple cellars, the flames spread rapidly. Brick Court, Hare Court, Elm Tree Court, Vine Court and Fig Court all suffered from the flames. The Church and the two Halls of the Temple were touched, but their solid masonry resisted the progress of the fire.

27 JANUARY.—Charles Cæsar, son of Sir Julius Cæsar, Master of the Rolls, was born on the 27th January, 1590. He himself became Master of the Rolls.

THE WEEK'S PERSONALITY.

The career of Charles Cæsar reflects no credit on the methods of judicial selection prevailing in the reign of Charles I. He started as a practitioner in the ecclesiastical courts, and in 1615, at the age of twenty-five, he was appointed a Master in Chancery, probably through the influence of his father, who had been sworn in as Master of the Rolls in the previous year, and who retained that post till his death in 1636, when he was succeeded by Sir Dudley Digges. In 1639, when death once more left the office vacant, the King practically put it up for auction. Sir Edward Leach offered £13,000 in two instalments. Sir Thomas Hatton offered his wife's house and a sum of money in addition. Lord Chief Justice Finch and Sir Ralph Freeman also made offers, but Sir Charles Cæsar outbid them all with a tender of £15,000. He did not live very long to recoup himself for the outlay, for he died of small-pox in 1642. His epitaph at Bennington in Hertfordshire magniloquently described him as " an equal distributor of unsuspected justice," but a less partial account speaks of him as " a very ass " and " the very anvil on which the doctors of the law of his society played." The second description is perhaps the more likely to be accurate.

CHOOSING THE JURY.

The initial delays in selecting the jury for the Hauptmann trial at Flemington seemed at first almost to suggest that the criminal law of the United States was in the same condition as that of Ireland in the days when Carson, on being told by an English lawyer that in England a criminal trial began when the jury was sworn, replied: " That's curious. With us it's all finished when that business is over." In those days, the golden rule of counsel for the defence was to challenge any man with a clean collar in order to fill the jury-box with " The Wild Flowers of Tullahogue," the illiterate peasants qualified by the Juries Act, 1871. The prosecution, on the other hand, made it a rule to challenge any man with a native Irish name. Thus once at Cork the Crown Solicitor challenged " Michael Joseph O'Sullivan of Blarney Lane," an appellation seeming to him to reek of Fenianism. " What is that that I hear ? " demanded O'Brien, J. " The Crown orders the witness to stand by," was the beaming reply. " Is not this Mr. Michael Joseph O'Sullivan ? " " Stand by." Then the judge exploded " I shall report to the Attorney-General that in this court-house I have heard insult offered to the worthy representative of one of the oldest and most respected Catholic families in this ancient city." The golden rule had for once proved a trap. Nor was the judge pacified till he had made further remarks on the " error of gross and Bœotian stupidity."

BY VOICE ALONE.

As yet the final result of the Flemington trial is impossible to forecast, and it is therefore not yet known whether in his remarkable identification of the voice of the accused man Colonel Lindbergh's memory served him accurately. Such a feat of recollection is certainly possible. Some time ago, there was a case in South Africa of a native who had been blinded by another native and his gang, and twenty years later, on hearing a voice from a neighbouring hut, cried " There he is ! There he is ! " The police were sent for and arrested the man indicated, bringing him before Mr. Napier Devitt, the magistrate in whose reminiscences the incident is recalled. No cross-examination shook the prosecutor's conviction that this was his assailant, and at last he was asked " Would you know this man by anything besides his voice ? " " Yes, your worship." " By what ? " " He has only four toes on his left foot. I saw that on the morning he killed me." The prisoner was ordered to walk out of the dock. His feet were bare in native fashion, and the little toe of his left foot was missing.

Reviews.

The Death Duties. By ROBERT DYMOND, of the Estate Duty Office, Somerset House, Solicitor (Honours). Seventh Edition, 1934. Demy 8vo. pp. lvi and (with Index) 736. London, Liverpool, Birmingham and Glasgow: The Solicitors' Law Stationery Society, Ltd. 30s. net.

In reviewing the sixth edition of Mr. Dymond's work on Death Duties we remarked that perhaps no greater tribute could be paid to an author than to say that, the last edition having been exhausted, his book has been temporarily out of print. That was a mis-statement for which we must apologise—the correct tribute would appear to be that, in spite of an equivalent number to the last edition (1930) having been reprinted in 1931, for more than twelve months the book has again been out of print.

On this occasion the author has been prevailed upon to give us a new edition for which practitioners cannot fail to be grateful. Whilst adhering to the form of the previous edition, Mr. Dymond has found enough in the statutory changes and further authorities to justify a new one. So much as is new is as excellently done as that part which largely consists of earlier material—the latter essential but obviously scrupulously checked and overhauled.

Death Duty problems being matters which must arise with considerable frequency in any busy lawyer's office, it is difficult to conceive how they can be properly dealt with unless an up-to-date and authoritative text-book on the subject is almost an article of office furniture. Mr. Dymond in his preface carefully (and no doubt very properly) disclaims for his work any *official* authority, but it cannot be denied that his experience as one of the solicitors in the Estate Duty Office provides, if we may be allowed to borrow the expression, "the little extra something that the others haven't got," and we have no hesitation in saying that the purchase of this edition is an investment which will not be regretted.

Housing Administration. By STEWART SWIFT. 1935. Demy 8vo. pp. xix and (with Index) 455. London: Butterworth & Co. (Publishers), Ltd.; Shaw & Sons, Ltd. 25s. net.

This book is not intended for the legal practitioner, although its clear arrangement and the method adopted of setting out the relevant portions of a statute (the author wisely does "not favour a synopsis or précis of sections of Acts") in regard to each problem may well render it useful as a guide to consulting one of the standard works on the subject. The author has in mind officials who administer the Housing Acts and expresses the hope that the book will appeal also to sanitary inspectors and medical officers of health concerned with the clearance of unhealthy areas and the repair of insanitary houses, and will be of value to other local government officers, members of local authorities, estate agents, owners of property and others interested in the housing problem. The writer treats the subject from the practical standpoint and within the limits which he has set himself has written an admirable book. It is to be hoped that he will deal again with the same questions when the legislation relating to housing and overcrowding foreshadowed by the present Government is in operation.

The Shops Acts, 1912 to 1934. By W. E. WILKINSON, LL.D. (Lond.), Solicitor of the Supreme Court. 1934. Demy 8vo pp. xvi and (with Index) 175. London, Liverpool, Glasgow and Birmingham: The Solicitors' Law Stationery Society, Ltd. 8s. 6d. net.

Every shopkeeper in the land is affected in some way or other by the Shops Act, 1934, which has introduced intensive variations into the law relating to the employment of young persons and of shop assistants generally. This volume, which contains the text of all the Shops Acts, with full and careful annotations, and includes also the new regulations and forms to be used in connection therewith, should be widely welcomed by both branches of the legal profession. One undoubted benefit which has accrued by the passing of the Act of last year is to be found in the fact that it has offered an opportunity of collecting into one volume all the miscellaneous Acts and Regulations, investigation into which has hitherto been a most trying experience. The author of the volume before us has enjoyed the experience which fitted him well to tackle this complex subject, and he has undoubtedly produced a book which leaves nothing to be desired on the score of completeness. There has been a wise selection of appropriate case law and the index discloses a degree of preparation that is altogether admirable and practicable. We have no doubt that the volume will enjoy a very wide sale.

Jackson's Agricultural Holdings and Tenant Right Valuation. Eighth Edition. 1934. By W. H. AGGS, M.A., LL.M., Barrister-at-Law. Demy 8vo. pp. xvi and (with Index) 392. London: Sweet & Maxwell, Ltd. 12s. 6d. net.

No new enactment has brought about the appearance of this edition; it may be that Parliament is at last satisfied with its efforts and that the consolidating Agricultural Holdings Act, 1923, is to be allowed to stand, or that the provision of credits and creation of marketing boards take up all the time it has to bestow on the farming community. But, if the occasion of its production be the exhaustion of the seventh edition, the opportunity has certainly been seized of bringing the work thoroughly up-to-date; the minor change in arbitration procedure effected by the Arbitration Act, 1934, is duly recorded, and a number of recent decisions interpreting the law are succinctly explained. In particular, we commend to the harassed practitioner, called upon to advise a tenant-farmer client whom to apply to for compensation when the reversion is or is about to be the subject-matter of an assignment, the admirable summary of the series of decisions, concluding (for the present) with *Farrow* v. *Orttewell*, on pp. 183–4. And we may remind readers whom it may concern that the book serves a dual purpose, and that Part II contains a wealth of information as to the valuation of manure and other matters of bucolic interest which we are not competent to review; but, as before, this Part also gives a complete set of local customs as to pre-entry and hold-over, valuation of hay, straw, roots, etc., obtaining in the various shires, which is invaluable for handy reference.

Books Received.

Mather on Sheriff and Execution Law. Third Edition, 1935. By C. R. WIGAN, M.A. (Oxon), Solicitor and Under-Sheriff for Surrey, and The Hon. DOUGALL MESTON, of Lincoln's Inn and the South-Eastern Circuit, Barrister-at-Law. Royal 8vo. pp. xci and (with Index) 702. London: Stevens & Sons, Ltd.; Sweet & Maxwell, Ltd. £2 2s. net.

Private International Law. By G. C. CHESHIRE, D.C.L., M.A., of Lincoln's Inn, Barrister-at-Law. 1935. Demy 8vo. pp. lx and (with Index) 584. London: Humphrey Milford, Oxford University Press. 25s. net.

Briand-Kellogg Pact of Paris (August 27, 1928). Articles of Interpretation as adopted by the Budapest Conference, 1934. Demy 8vo. pp. 70. London: Sweet & Maxwell, Ltd. 1s. 6d. net.

Life and Death at the Old Bailey. By R. THURSTON HOPKINS. 1935. Demy 8vo. pp. (with Index) 318. London: Herbert Jenkins, Ltd. 10s. 6d. net.

[All books acknowledged or reviewed can be obtained through the Solicitors' Law Stationery Society, Limited, London, Liverpool and Birmingham.]

Obituary.

JUDGE ROWLANDS.

His Honour Judge Rowland Rowlands, LL.B., Judge of County Courts on Circuit 30 since 1918, died at his residence at Porthcawl, on Thursday, 17th January, at the age of sixty-five. Educated at Cardiff College, University College of South Wales and Monmouthshire, Cardiff, and St. John's College, Cambridge, he was called to the Bar by the Inner Temple in 1892. He practised at the Chancery Bar until 1918, when he was appointed Judge of County Courts on Circuit 30 (Glamorganshire) in succession to Judge Bryn Roberts, who had been transferred to the North Wales Circuit.

MR. J. A. ATHERTON.

Mr. John Augustus Atherton, solicitor, of Weymouth and Bridport, formerly of Bedford-row, W.C., died at Weymouth on Monday, 21st January, at the age of sixty-eight. Mr. Atherton, who was admitted a solicitor in 1888, was senior partner in the firm of Messrs. De Gex & Atherton, of Bridport.

MR. J. BARKER.

Mr. John Barker, solicitor, senior partner in the firm of Messrs. John Barkers, of Grimsby, died at Great Grimsby on Tuesday, 22nd January, at the age of seventy-three. Mr. Barker was admitted a solicitor in 1884. He held the office of Clerk of the Peace for the Borough of Grimsby.

MR. A. B. DYE.

Mr. Alfred Braddock Dye, solicitor, City Coroner for Chester, died at his home at Chester on Thursday, 17th January, at the age of seventy-four. Mr. Dye served his articles with the late Mr. Ernest Brassey, of Chester, and was admitted a solicitor in 1905. He continued in practice with Mr. Brassey, who was City Coroner, and in 1917 he became Deputy Coroner. He was appointed City Coroner in succession to Mr. Brassey in 1921.

Mr. E. C. FRANCIS.

Mr. Earley Christopher Francis, solicitor, a partner in the firm of Messrs. Francis & How, of Chesham and Amersham, died on Monday, 21st January, as the result of a fall while hunting. Mr. Francis, who was seventy-three years of age, was admitted a solicitor in 1888. He was Registrar of Chesham County Court and Clerk to the Justices of Chesham and Amersham.

MR. J. ROGERS.

Mr. John Rogers, solicitor, head of the firm of Messrs. Reginald Rogers & Son, of Falmouth and Helston, died at Falmouth on Wednesday, 16th January, at the age of seventy. He was educated at Cheltenham College and was admitted a solicitor in 1888. Mr. Rogers acted as solicitor to the Great Western Railway Company for several years, and afterwards practised at Malvern, Worcestershire, before he joined his brother, the late Mr. Reginald N. Rogers, in partnership in the family practice at Falmouth and Helston.

MR. W. A. SCOTT.

Mr. William Allan Scott, solicitor, a partner in the firm of Messrs. Field, Roscoe & Co., of Lincoln's Inn Fields, W.C., died at his home at Northwood, on Wednesday, 9th January, at the age of forty-three. Mr. Scott was admitted a solicitor in 1915.

MR. E. W. WAY.

Mr. Ernest William Way, solicitor, head of the firm of Messrs. W. A. Way & Son, of Southsea, died at Emsworth, Hants, on Tuesday, 22nd January, at the age of sixty-five. Mr. Way was admitted a solicitor in 1890.

Notes of Cases.

High Court—Chancery Division.

In re **Arden ; Short** *v.* **Camm.**

Clauson, J. 7th December, 1934.

SETTLEMENT—REAL ESTATE—EQUITABLE ESTATE—WORDS OF LIMITATION—"ABSOLUTELY"—CONVEYANCING LANGUAGE—INTENTION OF SETTLOR.

By his will made in 1883, Robert E. Arden, who died in 1894, devised certain freehold hereditaments to trustees upon trust to pay the rents and profits thereof to his married daughter, Mrs. Camm, during her life, and after her death in trust for her children as she should by deed or will appoint, and in default of and subject to any such appointment for her children in equal shares. In 1896 on the marriage of her daughter Evelyn, with A. H. Nelson, since deceased, Mrs. Camm by deed poll in exercise of her power under her father's will appointed one-third share of the hereditaments subject to her life interest in trust for her daughter, her heirs, executors, administrators and assigns absolutely. And in 1901 by another deed poll supplemental to the appointment of 1896 and containing a recital that the appointor was desirous of appointing the residue remaining unappointed of the hereditaments among her daughter Evelyn, and her son Cuthbert Camm, Mrs. Camm in further exercise of her said power appointed the residue then remaining unappointed of the said hereditaments subject to her life interest therein, in trust as to one-fourth share therein for Evelyn and as to three fourth shares therein for Cuthbert Camm absolutely. The question now raised by this summons was whether the appointments made in 1901 carried the fee simple or other absolute interest to the appointees or a life estate only in the shares thereby appointed in their favour.

CLAUSON, J., in a considered judgment, said that having regard to the recital in the appointment of 1901 and to the presence of the word "absolutely" an intention was clearly disclosed to appoint one-fourth to Evelyn Nelson and three-fourths to Cuthbert Camm. The presence of the word "absolutely" showed that the appointment was not framed in strict conveyancing language. When strict conveyancing language is not employed it is sufficient that the instrument should disclose as a matter of construction a clear intention as to the quantum of interest which is intended to be given (see *In re Bostock's Settlement* [1921] 2 Ch. 469). But for the presence of the word "absolutely" the estates of the appointees would be estates for life only.

COUNSEL: *F. McMullan ; E. M. Winterbotham ; Cyril J. Radcliffe, L. F. Mumford ; Danckwerts.*

SOLICITORS: *Johnson, Peacock, Hepworth & Chowne ; Lawrence, Graham & Co. ; Lovell, Sons & Pitfield.*

[Reported by S. E. WILLIAMS, Esq., Barrister-at-Law.]

Bolsom Brothers (1928), *In re.*

Eve, J. 18th December, 1934.

COMPANY—MEMORANDUM OF ASSOCIATION—ALTERATION OF OBJECTS—PETITION FOR SANCTION—POWER TO CARRY ON NEW BUSINESS—COMPANIES ACT, 1929 (19 & 20 Geo. 5, c. 23), s. 5.

The company was incorporated in 1928 with a capital of £102,000, its principal objects being to purchase and carry on the undertaking of Bolsom Brothers, Ltd., manufacturers and dealers in boots and shoes and the retail mail order business of Morris Bolsom in footwear and other articles. The objects clause of the memorandum was in common form containing extensive powers. By a special resolution passed at a meeting of the company on 31st August, 1934, it was resolved to alter the objects set forth in the memorandum of association by adding to them the carrying on of some sixty

different classes of business and finally the business of "a universal stores." Since 1928 the company had formed two subsidiary companies, one of them to develop what was described as "club" trade or the sale and purchase of goods by subscriptions or small instalments. The petition for sanction was opposed by a minority of the shareholders on the ground, amongst others, that the business as sought to be included had no connection with the original business of the company. The last balance sheet of the company showed a loss of £13,305 and included in the assets a sum of £28,000 for goodwill.

EVE, J., in a considered judgment, said it would be disregarding the statutory protection to which creditors and shareholders were entitled if, in exercising his discretion, he were to confirm the proposed alterations. The financial situation of the company was not altogether satisfactory, and there was no evidence that it would be improved by extending the objects of the company. The directors could abandon the main business and take up an entirely new business without consulting the shareholders. Adopting the language of Neville, J., in *John Brown & Co., In re*, 112 L.T. 232, where distinct businesses were proposed to be carried on by the alterations suggested, he (his lordship) would not sanction them except upon evidence that there was a really present desire on the part of the company to extend its business in the direction indicated. No information had been given to the court as to the holding of the shares in the company, and it might be that the voting was controlled by the vendor, who was chairman and managing director of the company. The proposals were unprecedented and had been put before the court without the materials necessary in the case of a company whose destiny was largely under the control of the vendor. They were also speculative and entirely outside the ostensible object for which the company was brought into existence. No order would be made on the petition, except that the company pay the costs of the opposing shareholders.

COUNSEL: *J. B. Lindon; Wynn Parry.*

SOLICITORS: *Simmons & Simmons; Lucien Fior.*

[Reported by S. E. WILLIAMS, Esq., Barrister-at-Law.]

High Court—King's Bench Division.

Howard *v.* Pickfords, Ltd.

Du Parcq, J. 11th January, 1935.

MOTOR CAR—ACCIDENT—CHILD ON RUNNING BOARD—UNAUTHORISED—DRIVER NOT NEGLIGENT.

In this action Sydney John Howard, an infant, seven years of age, and his father, Thomas Samuel Howard, claimed from Pickfords, Ltd., damages for personal injuries sustained by the infant plaintiff, who, having seated himself on the running board of the defendants' stationary motor van without the knowledge or consent of the driver, was thrown off when the vehicle was driven away. The defendants denied negligence and said that the injuries were caused solely, or, alternatively, contributed to, by the negligence of the infant plaintiff. For the plaintiffs it was stated that the case was a somewhat unusual one. The accident happened in Willow-street, Shoreditch, at about 7 p.m. on the 30th July, 1934. The defendants' driver brought one of Messrs. Pickfords' vans along the street and drew it up on his off-side of the street and left it while carrying out his duties. There were a number of children playing near the van, and the infant plaintiff sat on the near-side running board. While he was sitting there the driver returned and, without looking round the van, got into the van, started it up and drove off. He swerved across to the other side of the road in order to get to his near-side of the road and in doing so the infant plaintiff was thrown on to the pavement and sustained, among other injuries, a fractured pelvis. The plaintiffs contended that the driver must have known that children were likely to be playing about round his van, and that if he knew that he was not entitled to start a piece of machinery on a public highway without making sure that there was no child on the van. For the defendants it was submitted that there was no evidence of negligence, and nobody could say that it was part of the duty of the driver of a motor vehicle to assume that there may be a child on the running board and to search the vehicle before driving off. The following authorities were referred to: *Cooke* v. *Midland Great Western Rly. of Ireland* [1909] A.C. 229; *Robert Addie & Sons (Collieries), Ltd.* v. *Dumbreck* [1929] A.C. 358; *Excelsior Wire Rope Co., Ltd.* v. *Callan and Others* [1930] A.C. 404; and *Mourton* v. *Poulter* [1930] 2 K.B. 183.

DU PARCQ, J., said that he accepted the evidence of the driver of the van to the effect that when he returned to the van he saw no children near the van. The infant plaintiff had in fact seated himself on the running board of the van—a thing which, of course, he had no right whatever to do. His lordship referred to the authorities cited and said that applying the principles in the relevant passages thereof to the present case he had no doubt that he ought to hold that there was no negligence at all on the part of the driver, and there must accordingly be judgment for the defendants, with costs.

COUNSEL: *Richard Eagle*, for the plaintiffs; *Cartwright Sharp*, K.C., and *A. F. Engelbach*, for the defendants.

SOLICITORS: *Musson & Co.; Stanley & Co.*

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

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Societies.

General Council of the Bar.

ANNUAL GENERAL MEETING.

The Annual General Meeting of the Bar was held in Inner Temple Hall on the 16th January.

Sir THOMAS INSKIP, K.C., M.P., the Attorney-General, referred in his opening address to the loss which the Bar had sustained by the death of Mr. Justice Bateson at the beginning of the term. If any member of the Bar, he said, should desire a model upon which to base his conduct, he could not choose one more nearly perfect than Mr. Justice Bateson's life at the Bar and afterwards on the Bench. After a tribute to the hard voluntary work of the Bar Council, which, he said, greatly assisted himself and maintained a high ethical standard in the profession, Sir Thomas praised the work which had been performed by large numbers of barristers and solicitors on poor persons' cases. A Poor Persons' Procedure Committee had sat during the year under the President of the Probate, Divorce and Admiralty Division to discuss the comparatively limited question of whether the rules should be altered to provide for payment of the court fees by an unsuccessful defendant, and to give a judge discretion in all cases to order that the minor costs should be paid to the poor person by his unsuccessful opponent. Its report, which had been issued at the beginning of the Long Vacation, had stated that the proposed alteration was not desirable. The importance of the report was, however, not so much in this finding, with which all would agree, as in its recognition of the ungrudging services rendered by members of the legal profession in order that justice might be done without respect to the wealth or the poverty of the litigant.

The Business of Courts Committee had issued a second interim report, and the Bar Council had drawn up a report on this document and included it as an appendix to the annual

statement. A good deal of the same ground would inevitably be covered by the recently-appointed Royal Commission. On some points, such as the elimination of the Divisional Court in connection with appeals, and the recommendation that there should be no appeal from the Court of Appeal except by leave, the Council had anticipated the ultimate decision. The Council was satisfied that it would be impossible for the Court of Appeal to cope with the increased quantity of work unless enough appeal judges were appointed to constitute three courts. This opinion, said Sir Thomas, had a good deal of foundation, and the appeals which came direct from the county court would require special provision for hearing them if a considerable list of arrears were not to accumulate. The Bar Council and the Bar as a whole would unhesitatingly accept any proposal which furthered the public interest. Although the profession was naturally somewhat conservative, it recognised that any vested interest it might possess must take second place. He hoped that something might emerge from all the discussions of the last two years which would result in the emergence of the only ideal arrangement: that when cases were accepted to be heard on a particular day or in a particular week they should be heard then, and that the long postponements which now militated so much against the administration of real justice, and imposed such hardships upon litigants, should be avoided. Whether that result could be obtained by the appointment of two new judges, only time and experience would show. All members of the Bar would, however, agree that the Bill which had been promoted with this object was a step in the right direction.

Retainers: the P.D.A. Division.

The Chairman of the Bar Council, Sir Herbert Cunliffe, K.C., in moving the adoption of the annual statement, reminded members of the Bar that the Council could not possibly publish a complete record of the whole of its proceedings and that of its committees during the year. Not only would such a record be too voluminous to be practicable, but the publication of many of the Council's proceedings might involve injury to individuals, who were possibly not members of the Bar. Again, on some questions still under consideration it would be premature to issue a statement. Such a question was that of retainers, on which the Council had for some time been attempting to frame a fair and reasonable set of rules which would respect, on the one hand, the ancient tradition of the Bar that the services of its members were open to any litigant under proper conditions, and, on the other hand, the natural desire of a client to be able to assure himself of the services of counsel whom he had instructed, probably at great length and at great expenditure of time and trouble. The Council were within sight of a solution which would have the assent of the Attorney-General and of The Law Society.

In a sentence referring to its report on the Second Interim Report of the Business of Courts Committee, the Council had stated that it had not been on all points unanimous. Its reason for taking this unusual step was to recognise the feeling of the Probate, Divorce and Admiralty Bar against certain proposals of the Committee. The representative of that Bar whom the Council had for some years co-opted under its powers had fought with his customary strength and efficiency the battle of the continued unity of the Division. The Chairman hoped that the Council's report did full justice to the desire of all members of the Bar that the great reputation of the Admiralty Court should not be lessened by any changes that might be made. The Council had recommended that an Admiralty and Commercial Court should be constituted under a specially-appointed judge of the King's Bench Division.

A projected sub-section in the Arbitration Bill, 1934, had laid down that an arbitrator might act as an advocate after the umpire had entered on a reference in lieu of the arbitrators. The Council had taken exception to this provision, on the ground that the distinction between the judicial functions of an arbitrator and the partisan functions of an advocate could not be too clearly and rigorously maintained. The Bill had been passed without this sub-section, to the Council's great satisfaction.

Postponements at Request of Counsel.

The Chairman observed that there had for some time been a definite and growing tendency on the part of certain judges to refuse to adjourn cases for the convenience of counsel, and to say that if counsel already engaged in the case could not attend, some other counsel must be briefed. He pointed out with respect that the convenience of counsel was very often in harmony with the interest of the litigant and of justice. Through no fault of his own, the most careful counsel sometimes found himself faced with engagements in two courts on the same day. Each of his clients had expended a great deal of time and money in informing him of his case. If there were to be no accommodation, one of those clients would have to go to a new counsel and, at great inconvenience, give him what must almost necessarily be an inadequate knowledge of the details of his case. This was a great hardship to the litigant, and might be modified by a little more help from the Bench. He suggested that a great deal of this inconvenience, and also of inconvenience with regard to trials generally, could be removed by definitely fixing dates for trials. Merely putting them in a general list without any indication of how long the cases before them would take caused great uncertainty and an inconvenience which sometimes amounted to hardship. The definite date for trial was one of the principal factors in the success of the New Procedure Rules.

After Mr. J. D. Cassels, K.C., M.P., had seconded the adoption of the statement, Mr. Holford Knight, K.C., M.P., urged the Council to set up machinery by which questions of general interest to the profession could be brought before a meeting representative of the whole body of the Bar for general discussion. He declared that the Bars of several foreign countries discussed not only professional questions but also matters affecting the community. At no period of the year had the general body of the Bar been asked to give its views on the annual statement. It was left in an undignified position and was not put in its right relation to the public.

Mr. William Latey, apologising for raising a controversial point on a usually amicable occasion, reminded the Council that in many responsible quarters there had developed a strong opposition against the partitioning of the P.D.A. Division. He hoped that the Council's report on a question of great public importance would not be treated as the last word of the representative body of the Bar of England on this matter.

Miss C. Macmillan desired to discuss the amendment of the law relating to married women, but the Attorney-General ruled that the topic was not germane to the motion to adopt the report.

The Chairman of the Council, in reply to these speakers, doubted whether it would be practicable to discuss the questions dealt with in the annual statement before a general meeting of members of the Bar. He pointed out that the House of Commons, of which Mr. Holford Knight was a distinguished member, did not consult its constituents every time a question came before it. Such discussion was the function of a representative body. In answer to Mr. Latey, he said that the Council had, in departure from the usual practice, disclosed that it was not unanimous in order that it might not give the impression that the P.D.A. Bar had assented to that part of the report which dealt with their Division. The representatives of that Bar had done everything they could to fight the battle of the continuity of the Division. He declined to inform Mr. Latey whether the opposition to the proposal to partition the Division had or had not been confined to the co-opted representative of the Division.

The annual statement was adopted with only a few dissentients.

Better Notice of Motion.

A motion by Mr. Hubert Sweeney that resolutions intended for discussion at the annual meeting should be posted up five clear days beforehand in the halls, libraries and common-rooms of the Inns of Court was withdrawn on the Chairman's undertaking that the Council would give careful consideration to the suggestion. The Chairman agreed that it contained the elements of a desirable improvement, but pointed out that the difficulty in its adoption lay in a rearrangement of the dates of the annual meeting and of the meeting of the executive committee which decided which resolutions were of general interest to the Bar.

Mr. H. B. Vaisey, K.C., and Mr. Noel B. Goldie, K.C., M.P., seconded a vote of thanks to the auditors of the Council's accounts: Messrs. Edward Clayton, K.C., W. E. Vernon and H. G. Robertson. The motion was carried amid applause, these gentlemen being re-appointed together with Sir Malcolm McIlwraith, K.C.M.G., K.C.

Mr. J. F. W. Galbraith, K.C., M.P., and Mr. A. W. Cockburn moved and seconded a vote of thanks to the scrutineers at the last election. Mr. Galbraith remarked that The Hon. Sylvia Fletcher Moulton was the first woman who had ever acted in this capacity. The meeting accorded this vote of thanks with acclamation, and expressed in the same way its gratitude to the Attorney-General for presiding.

The Hardwicke Society.

A meeting of the Society was held on Friday, 18th January, at 8.15 p.m., in the Middle Temple Common Room, the Hon. Treasurer (Mr. T. H. Mayers) in the chair. Mr. R. H. Ellis moved "That the present time is opportune for reviving the

Disarmament Conference." Mr. N. F. Stogdon opposed. There also spoke Mr. Granville Sharpe (ex-President), Mr. Llewellyn Thomas, Mr. Schaeffer, Mr. J. A. Boyd-Carpenter, Mr. C. E. Scholefield, Mr. T. Wigan, Mr. Menzies, The Hon. F. P. Howard, The Hon. E. Howard, Mr. Pain, Mr. Sweeney, Mr. MacNabb, and Mr. Thorne. The hon. mover having replied, the House divided, and the motion was carried by five votes.

Referees' (Landlord and Tenant Act, 1927) Association.

At the second annual dinner of this Association, held at the National Liberal Club on the 10th January, Mr. S. P. J. Merlin took the chair, and about fifty members and guests attended.

After His Majesty's health had been honoured, Mr. J. A. WEIR JOHNSTON proposed the health of the Bench, and Mr. Justice DU PARCQ, in reply, spoke of the friendship with the Bar which made a judge's life so pleasant. Judge Sir MORDAUNT SNAGGE, who also replied, spoke of the kaleidoscopic duties of a county court judge, for whom Parliament was always changing the pattern of the law and introducing fresh problems.

Mr. S. CARLILE DAVIS, of Plymouth, proposing the health of Other Guests, referred to the great power enjoyed by the Lord Chancellor's Secretary, who virtually appointed all unpaid magistrates, the fifty-five county court judges, and all the High Court judges of first instance. His office went back in direct succession to that of Deputy Clerk to the Crown in the reign of Edward III, and he was also liaison officer between the Referees and the Lord Chancellor's department. Mr. Davis congratulated the department on having at last provided the unfortunate tenant with a form on which he could make a claim for a new lease, and suggested that a Ministry of Justice would reduce the cost of legislation to a figure comparable with that existing in France, Germany and other continental countries.

The Hon. A. E. A. NAPIER, in a witty speech, described the public ignorance of the Lord Chancellor and his department. He related that the nurse who had once attended him in a nursing home had been very disappointed to learn that a certain visitor named Buckmaster had only been the Lord High Chancellor of Great Britain, when the whole staff had hoped he might be Gladys Cooper's husband. One of the strangest requests he remembered in the department had, he said, come from the mother of a Scottish hotel-keeper, who had asked for a pair of swans for an ornamental lake. He had been directed to reply that, although the King entrusted the Lord Chancellor with his conscience, no one had yet seen fit to trust him with swans. He chaffed His Hon. J. D. Crawford on the way in which he had managed to get whatever he wanted out of the Office of Works.

His Honour J. D. CRAWFORD, who also replied, retorted that, although he might have had his way with the Office of Works, the Lord Chancellor's department was quite hopeless; it had its own ideas, and did not care how they worked or whether they worked at all.

The toast of the Referees' Association was proposed by Mr. Justice ATKINSON, who claimed to have read all the mountainous literature with which the Honorary Secretary had provided him. As a former Referee under the Safeguarding of Industries Act, he could sympathise with the Landlord and Tenant Referees. He had been the only one, but had come in for enough abuse for fifty. He also had had to give meaning to vague and nebulous expressions and phrases, but his Act had possessed one advantage; it had been so framed that the Referee found it difficult to get light from on high, and was left very much *in profundis*. One attempt he made had failed miserably, and he was very pleased; he did not want light, but merely to be able to set up his own benighted beacons, which he could knock down whenever it suited him.

The CHAIRMAN, in reply, explained that s. 21 of the Act had provided that a committee consisting of the Lord Chief Justice, the Master of the Rolls, the President of The Law Society and the President of the Chartered Surveyors' Institution should select and appoint a panel of referees to administer the Act under the county courts. This committee had selected fifty-eight referees in 1928, about one-third each from the Bar, the solicitors, and the chartered surveyors. The first chairman of the Association had been Sir Willes Chitty, whose loss the whole profession deplored, for he had probably been the most helpful colleague in the legal profession. The cases tried by referees mainly turned on the burning question of good will, an expression which each referee had to define for himself. The purpose of the Association was to secure some kind of uniformity in the procedure of referees, especially in the quantification of good will.

Mr. L. G. H. HORTON SMITH said that when he had been appointed Honorary Secretary he had found that referees in different parts of the country had been working on totally different lines; he had actually had before him four precisely similar cases in which the referees and county court judges had reached completely different results, awarding the tenants various sums between £700 and £1,400. He had written two reports, both of which had had the effrontery to pay their way and leave a surplus. After a spirited denunciation of the referees' scale of pay, for the attention of Mr. Napier, he prayed for blessings on all litigants, of whom, he said, the more the merrier, and promised to assist the High Court judges with all the resources of the Association.

The health of the Chairman was proposed by Mr. Rewcastle.

Besides the speakers the following guests were present: Sir W. G. Stanhope Rolleston, F.S.I., Judge Konstam, K.C., Judge Earengey, K.C., and Mr. G. Head, F.S.I.

United Law Society.

A meeting of the United Law Society was held on the 21st January in the Middle Temple Common Room. Miss C. Colwill proposed: "That *Fardon* v. *Harcourt Rivington*, 48 T.L.R. 215, was wrongly decided." Mr. R. S. Johnson opposed. Messrs. Martin O'Connor (visitor), W. Vaughan Williams (visitor), J. H. Menzies and F. R. McQuown spoke, and Miss Colwill replied. The House being equally divided the Chairman gave his casting vote for the motion.

Gray's Inn.

GRAND DAY.

Thursday, 17th January, being the Grand Day of Hilary Term at Gray's Inn, the Treasurer (Master Bernard Campion, K.C.) and the Masters of the Bench entertained at dinner the following guests: The French Ambassador, Lord Camrose, Lord Macmillan, Lord Wright, the Lord Mayor, Mr. Justice Singleton, the Treasurer of the Hon. Society of the Inner Temple (Mr. A. M. Langdon, K.C.), the President of The Law Society (Mr. H. R. Blaker), Sir Harcourt Butler, General Sir Hubert Gough, the President of the Royal Academy, Sir John Maffey, Sir George Bonner (Senior Master of the Supreme Court), and Mr. Colin Smith (Registrar of the Privy Council).

The Benchers present, in addition to the Treasurer, were: Sir Dunbar Plunket Barton, K.C., Mr. Herbert F. Manisty, K.C., Lord Atkin, Sir William Byrne, Sir Montagu Sharpe, K.C., Lord Justice Greer, Sir Robert Horne, K.C., M.P., Sir Cecil Walsh, K.C., Lord Thankerton, Sir Walter Greaves-Lord, K.C., M.P., Mr. James Whitehead, K.C., Mr. Noel Middleton, Mr. N. L. C. Macaskie, K.C., Sir Albion Richardson, K.C., Mr. R. Warden Lee, Mr. H. J. Wallington, K.C., with the Preacher (Canon F. B. Ottley) and the Under-Treasurer (Mr. D. W. Douthwaite).

The Union Society of London.

(CENTENARY YEAR.)

A meeting of the Society was held at the Middle Temple Common Room, on Wednesday, the 23rd January, at 8.15 p.m., when the President (Mr. Alun Llewellyn) was in the chair. Mr. Hurle-Hobbs proposed the motion: "That the Peace Ballot fulfils no useful function in ascertaining the views of the people of this country." Mr. Sandilands opposed, and Messrs. Single, Brundret, Russell-Clarke, Moses, Ryan, Ross and Fraser also spoke. Upon a division the motion was lost by three votes.

Law Students' Debating Society.

At a meeting of the Society held at the Law Society's Court Room, on Tuesday, 22nd January (chairman, Miss H. M. Cross), the subject for debate was: "That man is born free but is everywhere in chains." Mr. M. Foulis opened in the affirmative; Mr. L. J. Frost opened in the negative. The following members also spoke: Mr. R. Langley Mitchell, Miss U. A. Hastie, Messrs. H. Peck, E. V. E. White, R. J. A. Temple, Q. B. Hurst, L. Lewis, T. R. E. Ennion and W. M. Pleadwell. The opener having replied, the motion was carried by one vote. There were twenty-one members and six visitors present.

PEGASUS CLUB BALL.

The Pegasus Club will hold its annual hunt ball in the Middle Temple Hall, by permission of the Benchers, on Thursday, 28th February.

Legal Notes and News.

Honours and Appointments.

The King has been pleased to approve the appointment of Mr. Alfred Townsend Bucknill, O.B.E., K.C., as one of the Justices of the High Court of Justice (Probate, Divorce and Admiralty Division).

The King has been pleased to approve a recommendation of the Home Secretary that Mr. Kenelm Preedy be appointed Recorder of Shrewsbury, to succeed the late Mr. J. W. St. Lawrance Leslie. Mr. Preedy was called to the Bar by the Middle Temple in 1904.

It is announced from the Colonial Office that the King has been pleased to approve the appointment of Mr. George Cyril Griffith Williams to be Chief Justice and Police Magistrate, St. Vincent, Windward Islands, in succession to Mr. Ransley Samuel Thacker, who has been transferred to the Colony of Fiji as Attorney-General. Mr. Williams was called to the Bar by the Middle Temple in 1921.

Mr. George Brewis, Senior Assistant Solicitor to the Town Clerk of Wigan, has been appointed Assistant Solicitor to the Gloucestershire County Council. Mr. Brewis was admitted a solicitor in 1931.

"THE LAW'S DELAY."

Mr. Justice Swift said last Wednesday that he was beginning to think that it was hopeless talking to litigants and their advisers, says *The Times*, about how they ought to be ready with their cases. Year after year complaints were heard about delay in the Law Courts. Most of it, he said, was caused by the parties and their advisers.

His lordship had before him an application in a case which, for the convenience of the parties, was fixed to be heard the following day. "Now I am told," he said, "that it cannot come on to-morrow. I suppose if I say it must I shall be told that justice cannot be done. Therefore I am now obliged to postpone it."

LAW PROFESSORSHIP AT CAMBRIDGE.

The Electors to the Whewell Professorship of International Law at Cambridge University, have elected Dr. Arnold Duncan McNair, M.A., LL.D., Fellow of Gonville and Caius and University Reader in International Law, to succeed Professor A. Pearce Higgins, LL.D., K.C., Trinity College, who retires at the end of September. Dr. McNair was placed at the head of Class I in both parts of the Law Tripos 1908–09, and was elected a Fellow of Caius in 1912.

Court Papers.

Supreme Court of Judicature.

Rota of Registrars in Attendance on

Date.	Emergency Rota.	Appeal Court No. 1.	Group I. Mr. Justice Eve. Non-Witness.	Group I. Mr. Justice Bennett. Witness. Part I.
	Mr.	Mr.	Mr.	Mr.
Jan. 28	Blaker	Andrews	Ritchie	*More
,, 29	More	Jones	Andrews	*Ritchie
,, 30	Hicks Beach	Ritchie	More	*Andrews
,, 31	Andrews	Blaker	Ritchie	More
Feb. 1	Jones	More	Andrews	*Ritchie
,, 2	Ritchie	Hicks Beach	More	Andrews

Date.	Group I. Mr. Justice Crossman. Witness. Part II.	Group II. Mr. Justice Clauson. Witness. Part II.	Mr. Justice Luxmoore. Witness. Part I.	Mr. Justice Farwell. Non-Witness.
	Mr.	Mr.	Mr.	Mr.
Jan. 28	Andrews	*Blaker	*Jones	Hicks Beach
,, 29	*More	Jones	*Hicks Beach	Blaker
,, 30	Ritchie	*Hicks Beach	*Blaker	Jones
,, 31	*Andrews	Blaker	*Jones	Hicks Beach
Feb. 1	More	*Jones	Hicks Beach	Blaker
,, 2	Ritchie	Hicks Beach	Blaker	Jones

* The Registrar will be in Chambers on these days, and also on the days when the Court is not sitting.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (30th June, 1932) 2%. Next London Stock Exchange Settlement, Thursday, 7th February, 1935.

	Div. Months.	Middle Price 23 Jan. 1935.	Flat Interest Yield. £ s. d.	‡Approximate Yield with redemption £ s. d.
ENGLISH GOVERNMENT SECURITIES				
Consols 4% 1957 or after	FA	118	3 7 10	2 17 8
Consols 2½%	JAJO	93	2 13 9	—
War Loan 3½% 1952 or after	JD	109¼	3 4 1	2 16 8
Funding 4% Loan 1960-90	MN	121	3 6 1	2 16 4
Funding 3% Loan 1959-69	AO	105¾	2 16 8	2 13 9
Victory 4% Loan Av. life 29 years	MS	118¾	3 7 4	3 0 4
Conversion 5% Loan 1944-64	MN	124	4 0 8	2 0 7
Conversion 4½% Loan 1940-44	JJ	113½	3 19 4	2 1 6
Conversion 3½% Loan 1961 or after	AO	112¼	3 2 4	2 16 6
Conversion 3% Loan 1948-53	MS	107¼	2 15 11	2 6 10
Conversion 2½% Loan 1944-49	AO	103¼	2 8 5	2 1 10
Local Loans 3% Stock 1912 or after	JAJO	97¾	3 1 4	—
Bank Stock	AO	380½	3 3 1	—
Guaranteed 2¾% Stock (Irish Land Act) 1933 or after	JJ	95½	2 17 7	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	99½	3 0 4	—
India 4½% 1950-55	MN	117	3 16 11	3 1 4
India 3½% 1931 or after	JAJO	100	3 10 0	—
India 3% 1948 or after	JAJO	94½	3 3 6	—
Sudan 4½% 1939-73 Av. life 27 years	FA	123	3 13 2	3 4 3
Sudan 4% 1974 Red. in part after 1950	MN	117	3 8 5	2 13 6
Tanganyika 4% Guaranteed 1951-71	FA	116	3 9 0	2 15 0
L.P.T.B.4½% "T.F.A." Stock 1942-72	JJ	113	3 19 8	2 9 3
COLONIAL SECURITIES				
Australia (Commonw'th) 4% 1955-70	JJ	111	3 12 1	3 4 10
*Australia (C'mm'nw'th) 3¼% 1948-53	JD	105	3 11 5	3 6 1
Canada 4% 1953-58	MS	114	3 10 2	3 0 6
*Natal 3% 1929-49	JJ	101	2 19 5	—
*New South Wales 3½% 1930-50	JJ	100	3 10 0	3 10 0
*New Zealand 3% 1945	AO	101	2 19 5	2 17 9
Nigeria 4% 1963	AO	116	3 9 0	3 3 0
*Queensland 3½% 1950-70	JJ	102	3 8 8	3 6 7
South Africa 3½% 1953-73	JD	109	3 4 3	2 17 0
*Victoria 3½% 1929-49	AO	101	3 9 4	—
CORPORATION STOCKS				
Birmingham 3% 1947 or after	JJ	98	3 1 3	—
*Croydon 3% 1940-60	AO	101	2 19 5	2 15 3
Essex County 3½% 1952-72	JD	105	3 6 8	3 2 8
Leeds 3% 1927 or after	JJ	98	3 1 3	—
Liverpool 3¼% Redeemable by agreement with holders or by purchase	JAJO	108	3 4 10	—
London County 2½% Consolidated Stock after 1920 at option of Corp.	MJSD	92	2 14 4	—
London County 3% Consolidated Stock after 1920 at option of Corp.	MJSD	98	3 1 3	—
Manchester 3% 1941 or after	FA	98	3 1 3	—
*Metropolitan Consd. 2½% 1920-49	MJSD	101½	2 9 3	—
Metropolitan Water Board 3% "A" 1963-2003	AO	101	2 19 5	2 18 11
* Do. do. 3% "B" 1934-2003	MS	101	2 19 5	—
Do. do. 3% "E" 1953-73	JJ	103	2 18 3	2 15 8
Middlesex County Council 4% 1952-72	MN	116	3 9 0	2 17 0
† Do. do. 4½% 1950-70	MN	117	3 16 11	3 2 8
Nottingham 3% Irredeemable	MN	99	3 0 7	—
Sheffield Corp. 3¼% 1968	JJ	107	3 5 5	3 3 1
ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS				
Gt. Western Rly. 4% Debenture	JJ	117	3 8 5	—
Gt. Western Rly. 4½% Debenture	JJ	128½	3 10 0	—
Gt. Western Rly. 5% Debenture	JJ	138½	3 12 2	—
Gt. Western Rly. 5% Rent Charge	FA	133½	3 14 11	—
Gt. Western Rly. 5% Cons. Guaranteed	MA	133½	3 14 11	—
Gt. Western Rly. 5% Preference	MA	118½	4 4 5	—
Southern Rly. 4% Debenture	JJ	115½	3 9 3	—
Southern Rly. 4% Red. Deb. 1962-67	JJ	113⅜	3 10 7	3 5 0
Southern Rly. 5% Guaranteed	MA	132½	3 15 6	—
Southern Rly. 5% Preference	MA	119½	4 3 8	—

*Not available to Trustees over par. † Not available to Trustees over 115.
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